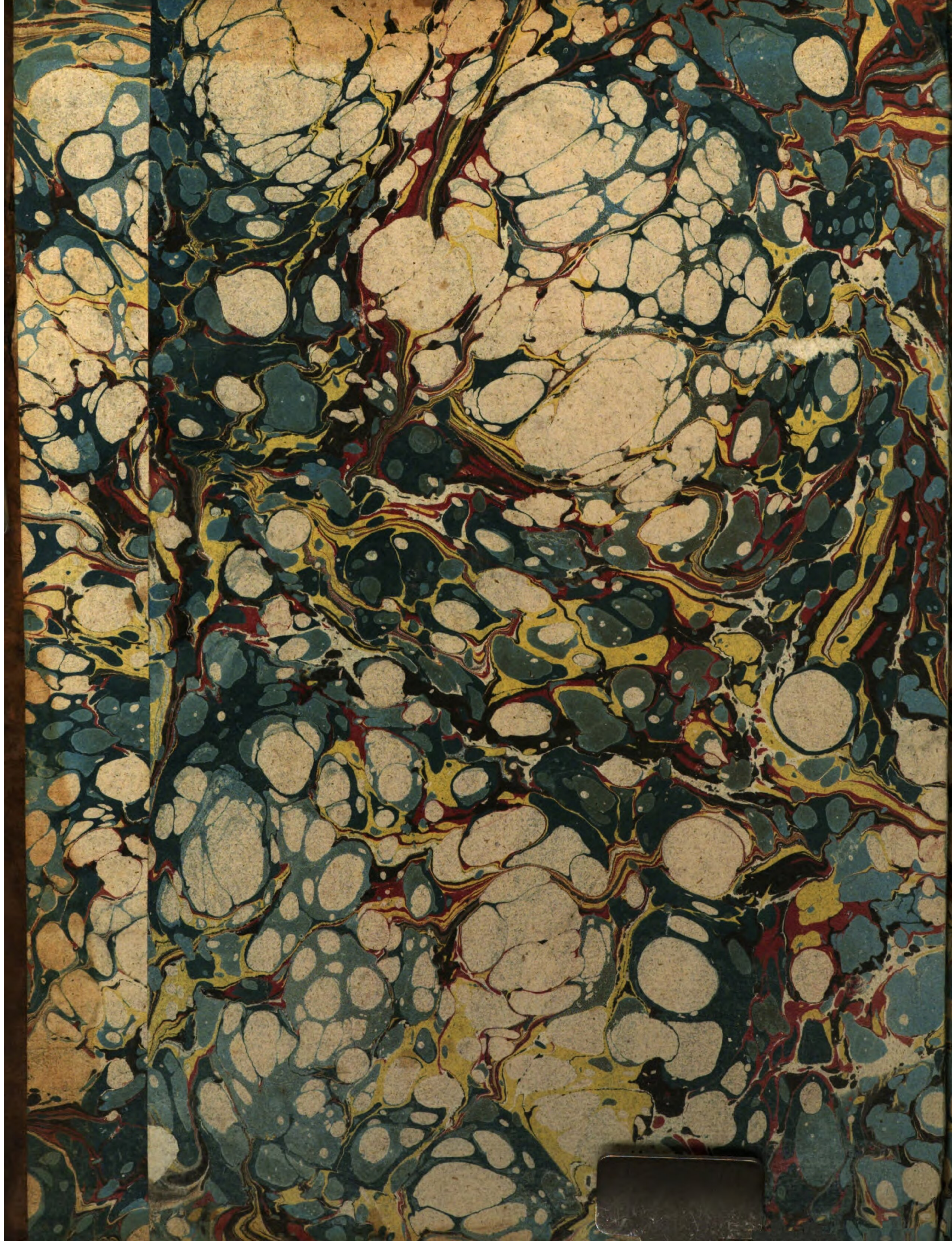
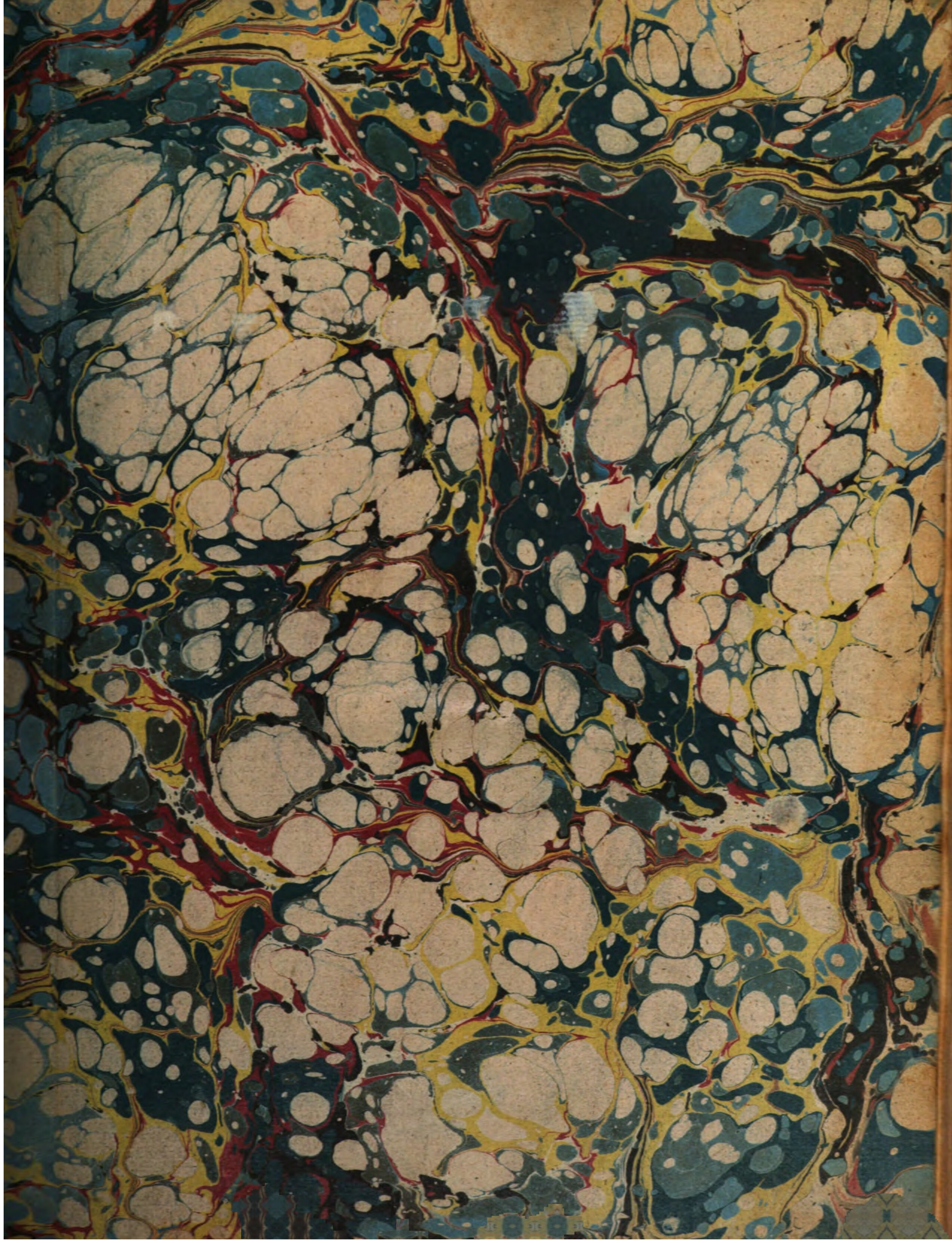








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N O T E S

T O

THE SECOND AND THIRD BOOKS

OF THE

H I S T O R Y

OF THE

Life of King Henry the Second.

With an APPENDIX to each.

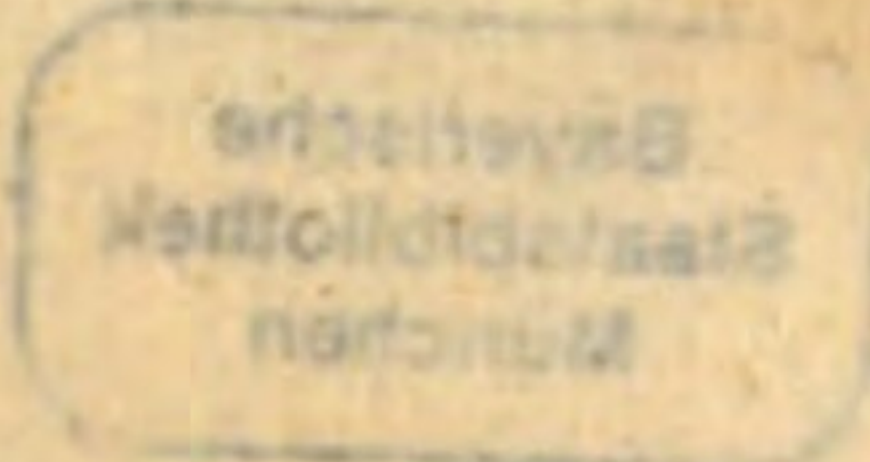
By GEORGE Lord LYTTTELTON,



L O N D O N,

Printed for W. SANDBY and J. DODSLEY.

MDCCLXVII.



IN TWO VOLUMES

TO

THE SECOND AND THIRD BOOKS

OF THE

HISTORY

OF THE

Life of King Henry the Second.

With an Appendix to each.

By GEORGE LYTTON.



LONDON:

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MDCCLXXII

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N O T E S

T O T H E

S E C O N D B O O K

O F T H E

Life of King Henry the Second.

PAGE 10. *He therefore summoned a parliament, wherein almost all his nobles were present, and having properly laid before them the wants of the crown, the losses it had suffered, the illegality of the grants, and the urgent necessity of a speedy resumption, obtained their concurrence to it, and proceeded to put it in immediate execution.*

It does not appear that this secret article of the treaty of Winchester had received the sanction of parliament, as the three others had done, during the life of King Stephen. That prince (one may presume) delayed to ask it, for fear of offending the nobles of his own faction; and Henry durst not press him (as he did in other instances) to execute this part of the agreement between them, lest he should take advantage of it to excite new commotions in England, before he himself had obtained a peace from Louis. It was therefore necessary to ask the concurrence of parliament to this resumption, after he came to the crown: and he seems to have acted wisely in not proposing it to them, till the expulsion of the foreign troops, and demolition of the castles, had been fully executed.

P. 11. *The cause assigned for these resumptions was not a defect in the title of the grantor, &c.*

Some historians have indeed given that reason for them; but the fact itself proves the contrary. For, in that case, only the grants which Stephen had made would have been resumed by his successor, not those of Matilda. Besides, we are assured, that Stephen himself had consented to these resumptions at the treaty of Winchester, which he would never

Neubrigen.
p. 282. l. ii.
Gerv. Chron.
p. 1377.

have done upon the foundation of the grants being illegal, *because made by him*. The true reason was the poverty of the crown, or (to use the words of William of Newbury) *quod regii redditus breves essent, qui avito tempore uberes fuerant*; and the danger of leaving in the hands of the barons so many of the royal fortresses, which Gervase calls, with great propriety, *Rebellionum materiam, et suspicionum causas*.

P. 18. *He therefore joined two laymen in the commission, the earl of Leicester and Richard de Lucy.*

It seems that the earl of Leicester had the precedence of Richard de Lucy, though both are styled equally *Justiciarii Angliæ*, in the records of those times. Dugdale, in his Baronage, supposes that the latter was not made Justiciary till the eighth year of Henry II, and quotes for it Roger Hoveden, who says no such thing, but only mentions him as Justiciary in some of the transactions which past in that year. Indeed this work of that learned author is much more inaccurate than most of his other writings, and ought to be read with caution.

P. 22. *And just before the death of Stephen the archdeaconry of Canterbury was likewise given to him by the same prelate.*

Fitzstephen says that the archdeaconry of Canterbury was the first dignity in the church of England, next to bishops and abbots, and was worth to Becket a hundred pounds *per ann.* equivalent to a benefice of fifteen hundred at present. *Post episcopos et abbates, in ecclesia Anglorum hic primus et dignior est personatus, et ei valebat centum libras argenti.*

P. 24. *The Chancellour of England, at this time, had no distinct court of Judicature in which he presided; but he acted together with the Justiciary and other great officers, in matters of the revenue, at the Exchequer, and sometimes in the counties, upon circuits.*

Breton who flourished in the reign of Edward the First, writing of all other courts, from the highest tribunal to the court-baron, makes no mention of the chancery (see Dugdale's Origin. Juridiciales). And Mr. Madox says, that, till the reign of King John, the chancery was usually holden at the Exchequer, the great seal being commonly kept and many or most of the chancery writs dispatched and sealed there. But the same author has shewn, that, in the reign of Henry the Second, pleas were held in the county of Kent, before the king's Chancellour, and the earl of Leicester, chief-justice, and also before the Chancellour and Henry de Essex, high-constable (see Madox's History of the Exchequer, c. ii. p. 42, 43.)

We

We have a description of the office of Chancellour in the following words of a contemporary writer of Becket's life: "Cancellarii dignitas est, ut secundus à rege in regno habeatur; ut alterâ parte figilli regii, quod et ad ejus pertinet custodiam, propria signet mandata: ut capella regia in illius sit dispositione et cura: ut vacantes archiepiscopatus, episcopatus, abbatias et baronias cadentes in manum regis ipse suscipiat et conservet: ut omnibus regiis adsit consiliis; etiam non vocatus accedat: ut omnia figilliferi clerici regii sua manu signentur" (see Dugdale's Origin. juridical. & Selden. upon the office of Chancellour). But the dignity of this office is exaggerated by this author, probably from a desire of doing honour to Becket. For the Dialogus de Scaccario expressly says, that the Great Justiciary had the precedence in the court of Exchequer before the Chancellour, and it appears from many other proofs that his power and dignity were greater at this time. Nor is it true that the custody of vacant prelacies or of baronies escheated to the crown belonged officially to the Chancellour. For it appears evidently by the rolls, that the king committed it to whom he pleased (see Hist. of the Exchequer, c. 10.) Some of these had been granted to Becket, but not in right of his office. Upon the whole, this passage deserves little regard.

There are some verses of John of Salisbury, in his preface to his Policraticon, which have made some persons think, that, as early as in the reign of King Henry the Second, the chancellour had a power to temper and moderate the common law by equity. The verses are these:

See Duck de
Autoritate
Jur. Civ.
c. viii. p. 305.

- " Quærendus regni tibi cancellarius Angli,
- " Primus sollicita mente petendus erit.
- " Hic est qui regni leges cancellat iniquas,
- " Et mandata pii principis æqua facit.
- " Si quid obest populo, vel moribus est inimicum,
- " Quicquid id est, per eum definit esse nocens."

But, from other proofs, it appears, that this was not a description of the chancellour's office, as it was in those days; but a personal compliment paid to Becket, with such exaggerations as poetry may admit of, and a quibble upon the words *cancellat* and *cancellarius*.

As a specimen of the inaccuracy of Monsieur Rapin Thoyras, in his history of this reign, and of the little knowledge he had of our ancient constitution, I shall transcribe a passage out of him, as translated by Mr. Tindal, who has faithfully rendered his sense: "After the king (says he) had taken all the precautions he thought proper, for the restoring tranquillity in the kingdom, he chose a council out of the most eminent

“ persons, as well among the clergy as the nobility. Theobald, arch-
 “ bishop, Thomas Becket, archdeacon of Canterbury, who was just
 “ made chancellor; Robert, earl of Leicester, great justiciary of the
 “ realm, held the first rank in it. At the head of the *cabinet-council*
 “ was Matilda his mother, whom long experience, and her own mis-
 “ fortunes, had rendered wise at her own cost. *These two councils being*
 “ *established, &c.*” There was not, in those days, or for many cen-
 turies after, any such thing in this country as a *cabinet-council*; and
 that after Henry the Second came to the crown Matilda was never in
 England. But Rapin makes perpetual mistakes of this nature; and,
 except in what relates to ecclesiastical matters, about which he seems
 to have taken more pains, is a most careless and superficial writer
 of the history of this country, till he comes down to the times of
 Henry the Seventh. His sensible and learned translator, Mr. Tindal,
 has corrected many of his errors; but was forced to leave many more,
 which any reader will see, who will compare Rapin’s work with our
 ancient historians, or with the clearest accounts of our ancient con-
 stitution.

P. 34. *He likewise insisted, and not without an ancient claim, that Malcolm
 should acknowledge himself his vassal for Lothian.*

Some of the modern Scotch historians having denied the fact here
 asserted, I think it proper to give my authorities, with some short ob-
 servations. The words of Diceto (*Imag. Histor.*) under the year 1157,
 are these: “ Melchomus rex Scotorum reddidit ei (Henrico, scilicet)
 “ civitatem Carleul, castrum Baenburg, Novum castrum super Tinam, et
 “ *comitatum Lodonensem.*” The Norman chronicle of Robertus de
 Monte has also these words: “ Hoc anno Malcolmus rex Scotorum red-
 “ didit Henrico regi quicquid habebat de dominio suo, id est, civitatem
 “ Carlcuith, castrum Baemburch, Novum castrum super Tinam, et co-
 “ *mitatum Lodonensem.*” As these are both contemporary testimonies,
 they are of great weight; and I may add to them the annals of Waverley
 and Matthew Paris. Yet, I presume, they are all inaccurate in giving
 the reader to understand, that the county of Lothian was restored
 to King Henry in the same manner as the other places there
 mentioned. For only the *sovereignty* of it was yielded to him; the
 country being still possessed by Malcolm, but held in fief of the English
 crown, as it had been by Kenneth the Third and other kings of Scotland.
 And for this reason it was, that, in paying his homage, he did it with a
 saving *to his royal dignity*; that it might appear, it was only for this part
 of

of Scotland, not for the whole kingdom. Had he done homage only for the earldom of Huntingdon, there would have been no need of this saving; since his being a vassal for a county of England could not justly be supposed to impeach his royal dignity, as king of Scotland. And this also accounts for the silence of William of Newbury, who mentions only the three Northern counties, as now restored to Henry; because Lothian was not upon the same foot with them, but still remained in the possession of the Scotch, though under condition of homage and fealty to England. That, in some way or other, it was subject to Henry, a proof may be drawn from the words of Henry himself, in the Letters patent he gave to Dermot king of Leinster, the preamble of which is as follows: "Henricus, rex Angliæ, dux Normanniæ et Aquitaniæ, et comes Andegaviæ, universis fidelibus suis, Anglis, Normannis, Gwalen-
 " fibus, et Scotis, cunctisque nationibus suæ ditioni subditis, salutem." V. Girald. Cambren. Hibernia expugnat. lib. i. cap. i.

The three Northern counties having before been recovered, the only Scotch subjects, or liegemen, Henry could have at this time, were the Scotch inhabiting Lothian, unless we should suppose that some of that nation had fiefs in England, of which I find no evidence in records or history. It does not well appear, why Diceto, the annals of Waverley, and the Norman chronicle, in the passages cited above, mention only Carlisle, the castle of Bamburg, and Newcastle upon Tyne, as yielded now to Henry by the king of Scotland; whereas it is certain, from the testimony of William of Newbury, and other good evidence, that all the three Northern counties were delivered up to him. These were indeed the chief places of Cumberland and Northumberland; but the counties should have been mentioned, as they are very distinctly, by William of Newbury, a contemporary historian. V. Neubrig. l. ii. c. 4.

With regard to the claim which the kings of England had of homage for Lothian, these are the words of the Wallingford chronicle, written by an Abbot, who lived under Henry the Second: "Suggestit rex Kineth regi Eadgaro Louthion ad suum jus debere pertinere, et hæreditariè à regibus Scotorum possideri. Rex nolens aliquid abruptè facere ne post factum pœniteret, regis Kineth causam curiæ suæ intimavit. Proceres vero, qui à progenitoribus erant eruditi, nisi sub nomine homagii regi Angliæ à rege Scotorum impensî, et præcipuè quia ad tuendum terram illam difficilis est accessus et parum proficua ejus dominatio, assensit autem assertioni huic Kineth, et sub nomine homagii eam petiit et accepit, fecitque regi Eadgaro homagium sub cautione multa promittens, quod populo partis illius antiquas consuetudines non negaret, et sub nomine et linguâ Anglicanâ permanerent. Quod usque hodie firmum manet. Sicque

V. Chronic. Johan. Wallingford.

“ Sicque determinata est vetus querela de Louthion, et adhuc nova sæpe
“ intentatur.”

Though the passage is evidently mutilated in two places, enough of it is clear, to prove a very ancient dependence of Lothian on the English crown. Which is also confirmed by Matthew of Westminster, with this remarkable circumstance, “ Dedit insuper ei rex (Eadgarus) mansiones in itinere plurimas, ut ipse et ejus successores ad festum venientes, ac denuo revertentes, hospitari valuissent, quæ usque in tempora regis Henrici secundi, in potestate regum Scotiæ remanserunt.” Florence of Worcester also so far confirms it, that he reckons Keneth among the kings and princes who swore fealty to Edgar. The story told by this historian of Keneth and seven other princes of the Cumbrian Britons or Welch having rowed the barge of Edgar on the river Dee, I much doubt of: but his evidence as to the *vassalage* of Keneth is not liable to the same objections.

P. 35. *and the English monarch conferred on him the earldom of Hunting-
ton, against the claim of the earl of Northampton, to whose father it had
been given by Stephen on the death of Henry prince of Scotland.*

See Camden's
Britannia,
CAMBRIDGE-
SHIRE.

No mention is made, in any history or record, of the county of Cambridge being annexed to this grant of the earldom of Huntingdon. Yet it appears by records, that David, the grandfather of Malcolm, received the third penny of the county or earldom of Cambridge, when he was earl of Huntingdon. Possibly the two counties were then united. We also find that the young King Henry added it to the grant of Huntingdonshire, which he made to David the brother of William King of Scotland, when he confederated with that prince against his father, in the year 1173. After this we have no more of this earldom, till Sir John of Haynault, brother of William earl of Holland and Haynault, was made earl of Cambridge by King Edward the Third.

P. 36. *but, from some remains of it, which are still to be seen, and for
several other reasons, I should judge that it (viz. Offa's Ditch) was rather
intended for a boundary, to separate the territories of the English from
those of the Welch, than to protect the former, as a fortification.*

A law of Harold Harefoot is mentioned by Mr. Selden, which enacts, that if any Welchman, coming into England without leave, was taken on this side of Offa's Ditch, his right hand should be cut off by the king's officer. This statute shews, that, so late as in the reign of that Danish monarch, this ditch was considered as a discriminating limit between the two nations; but afterwards, when all the borders of Wales beyond

beyond that ditch were filled with English colonies, and the Welch themselves had submitted to the sovereignty of the English under feudal bonds of allegiance, it was necessarily abrogated and fell into disuse.

P. 38. *but the two younger were subordinate to the eldest, who had North-Wales, and held his royal seat at Aberffraw in the isle of Anglesea, which was the Mona of the Britons.*

The very intelligent and sensible author of the general Preface to Wotton's collection of the Welch Laws is of opinion, that the sovereignty of the kings of North-Wales over those of South-Wales and Powis-land did not exist in these times, but was a claim set up afterwards, about the days of our Henry the Second. Though I perfectly agree with him in most other points, I do not think his arguments here are sufficient to overturn the authority of so many writers as are unanimous in the other opinion, which I the rather incline to, because it seems that the Welch would hardly have continued without a head, or under princes independent the one of the other, when they had a constant war to maintain with the Saxons. It is therefore very probable, that they gave a pre-eminence to the king of North-Wales, whose country was the strongest; and that the two others were subordinate to, and dependent on him; as, in each royal family of the three kingdoms, the younger sons were on the eldest.

Vid. Præfat.
Gul. Clarke
ad Leg. Wal.

P. 38. *and made a reformation of their political, civil, and municipal laws, which were digested by him into three books.*

In the four prefaces to these laws, as published in England, I find a great difference with regard to the manner in which Howel Dha. made this reformation. The first says, he convened out of every *commote* (which was a lesser division of *cantreds*, or *hundreds*) six men, among whom were persons of dignity in the church, bishops, archbishops, abbots, and doctors; that out of the whole number of these, when assembled together, twelve of the wisest laymen were chosen, and one clergyman of the greatest reputation among them for knowledge in the laws, to whom the king gave authority to abolish such laws as they should judge to be bad, and substitute others in their place; which work, being finished, received a sanction from all the assembly. Blegored (who at that time was archdeacon of Landaff) is afterwards mentioned in that preface, as having had a principal hand in this reformation.

Vid. Præfationes IV. ad Leg. Wall.

The second preface says, that, out of the wisest men in his territories (*in principatu suo*) Howel assembled six from every *cantred* (not *commote*) in all Wales, of which four were laymen, and two were ecclesiasticks; that

these

these examined the laws then in use, alleviated what seemed too severe, and aggravated what was too light; left some unaltered; amended, or abrogated others; and enacted some new ones. With this account the fourth preface perfectly agrees.

But the third agrees with the first, that the six men were chosen from every *commote* in Wales; and that they delegated their authority to twelve laymen, and one clergyman, namely, Blegored, of whom no mention is made in the other two.

Vid. Præfat.
Gul. Clarke
ad Leg. Wall.

Vid. Præfat.
prædict.

It is plain, from these differences, that none of the four prefaces were affixed to the laws by Howel Dha, but were added in later times. The first of them is supposed to be the most ancient. Some authors report that Howel went in person to Rome, and obtained the pope's confirmation of the laws he had compiled. But none of the prefaces mention this circumstance; and (as an author who understands the Welch language affirms) it is not to be found in the original history of Caradoc of Lancarvan, though it is in the translation of Humphrey Llwyd, published by Dr. Powel: that translator having added, not very judiciously, some things of his own to the text of his author. The fact in question is evidently false: for it is impossible that the pope could have given his sanction to some of these laws; particularly those concerning divorces, in which a much greater liberty is allowed than the see of Rome has ever admitted; a stinking breath in the husband being accounted there a good reason for a divorce, besides other causes, which it will not be necessary or decent to enumerate here.

P. 47. *Twelve knights, of considerable note and distinction were retained in his service &c.*

Their names were William de Londres, Richard de Greenfield, or Granville, Paine de Tuberville, Robert de St. Quintin, Richard de Syward, Gilbert de Humfreville, Roger de Berkrolles, Reginald de Sully, Peter le Score, John le Fleming, Oliver de St. John, William le Esterling, called for shortness Stradling.

P. 72. *He therefore resolved to attempt it, and having drawn out of the whole militia of England a very great army, he led it through Cheshire into Flintshire, &c.*

Vid. Chron.
Norm. sub
ann. 1156.

According to the Norman chronicle of Robertus de Monte, there was something very particular in the manner of raising this army. His words are these: "Rex Henricus præparavit maximam expeditionem, *ita ut duo*
" *milites*

" milites de tota Anglia tertium pararent, ad opprimendum Gualenses."

Mr. Madox has shewn, in his History of the Exchequer, that a scutage was raised for this war on the clergy that held of the crown by knight-service. We must therefore understand the words above-cited, as only extending to lay-fees. But I rather doubt the truth of it, as it is not confirmed by our records, or by any English writer who lived in those times. I find indeed the same words in the annals of Waverley; but as it is probable this part of those annals was not compiled till long afterwards (for the words of the Norman chronicle are often transcribed in them) I think it does not add much to the credit of the original author.

P. 72. *But this appearance was only an artifice to draw the English into a narrow and difficult pass, between two ranges of hills, &c.*

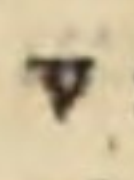
Camden, in his Britannia, says, that this pass is near the river Alen; and it appears to have been formed by some hills, which, in the map he has given of Flintshire, are placed to the north of that river between Kilken and Flint. Dr. Powel, in his Notes to the Welch chronicle, mentions this action, as it is described by William of Newbury; and says, that the streights, which the English army were then attempting to pass, were at Coensylth, near Flint. Probably they mean the same place. There was another road on the sands along the sea-shore, which Henry, it may be presumed, avoided at first, from an apprehension of some danger in passing those sands, though he afterwards took it, as safer than the former from the ambuscades of the Welch. Giraldus Cambrensis, in his account of this country, has mentioned both. His words are these: "In cellula de Bafinwerke pernoctavimus. In crastino vero
" longum vivumque per loca sabulum, non absque formidine, permeantes,
" sylvestria de Coleshull, id est, Carbonis colle, à dextrâ reliquimus, ubi
" Anglorum rex, Henricus secundus, nostris diebus, cum primo Walliam
" hostiliter intravit, juvenili impetu et inconsulto calore arctum illud
" sylvestre penetrare præsumens, cum detrimento suorum et damno non
" modico, ambiguam bellorum aleam expertus est." The place which Camden and Giraldus call Coleshull, or, in modern English, *Coleshill*, is called in the Welch chronicle *Coed Eulo*. But it is observable, that, by the account which is given in that chronicle of this engagement, it seems that the king was not present in it himself, but only a detachment from his camp near Chester. Nevertheless, the clear testimony of Giraldus Cambrensis, William of Newbury, and Gervase of Canterbury, contemporary writers; and the duel and condemnation of Henry de Essex, in consequence of it, leave us no room to doubt that he was there in person. Perhaps the error is not in the chronicle, but in Humphrey Llwyd's translation, which,

See Camden's
Britannia,
FLINTSHIRE.

NOTES TO THE SECOND BOOK OF

not understanding the original language, I am forced to make use of, as published by Dr. Powel, and since, with some alterations, by the Rev. Mr. Wynne.

P. 79. *and this sufficiently accounts for none of those coins having ever been found.*

Mr. Folkes, in his book on English coins, mentions some pennies coined at York with the name Eustacius. But as Eustace was the king's eldest son, and as his father desired to have him crowned in his own life-time, I do not reckon these among the coins abovementioned; though these also would undoubtedly have been melted down and destroyed by King Henry the Second, if they had not been lost, or secreted. Mr. Folkes also mentions another coin he had seen in the earl of Pembroke's collection, that has the name of King Stephen only on the reverse, and on the forefide a profile head with a crozier and  HEN . . .  S E P. C. which he supposes to be the head of Henry bishop of Winchester, brother to the king (see Folkes's Table of English Coins, p. 5.) But probably this was coined at one of the Royal Mints.

P. 84. *Some accounts that are given of the luxury and expence of his table are incredible, &c.*

Fittstephen tells us, that one day there was served up to Becket, during this embassy, a single dish of eels, which cost five pounds sterling (*centum solidis sterlingorum emptum*). He adds, that it was talked of all over the country; and well it might; for, twenty shillings in those days containing in them as much silver as sixty in these, or little less, if we estimate silver at only five times above the present value, as much was paid for this single dish of eels, as if we now bought one for seventy five pounds sterling, or thereabouts. But such a price exceeds all belief. And it must be observed, that this author is very apt to exaggerate in his accounts of those times; but more especially in what he writes to the honour of Becket.

P. 93. *Nor does it seem that the policy of those times ever regarded his dominions upon the French continent as prejudicial to England. Those which were maritime provinces (and most of them were so) appeared very commodious to the English, on account of their trade; especially Normandy and Bretagne; which, lying opposite to their coasts, secured to that nation the sovereignty of the whole British ocean.*

There is a fine passage in the speech, which Lord Bacon, in his History of King Henry the Seventh, puts into the mouth of Thomas Morton,

Morton, archbishop of Canterbury and chancellor of England, as delivered to the parliament called by that prince in the third year of his reign, on the war which the king of France was then preparing to make against the duke of Bretagne. The words are these: "If the French king shall make a province of Bretagne, and join it to the crown of France, then it is worthy the consideration how this may import England, as well in the increasement of the greatness of France by the addition of such a country, *which stretches it's boughs unto our seas*, as in depriving this nation, and leaving it so naked of so firm and assured confederates, as the Britons have ever been. For then it will come to pass, that whereas, not long since, *this realm was mighty upon the continent, first in territory, and after in alliance, in respect of Burgundy and Bretagne, which were confederates indeed, but dependent confederates*; now the one being already cast, partly into the greatness of France and partly into that of Austria, the other is like wholly to be cast into the greatness of France; *and this island shall remain confined in effect, within the salt-waters, and girt about with the coast countries of two mighty monarchs.*"

On this I would observe, that a more dreadful evil than Lord Bacon makes Chancellor Morton express his apprehensions of, in the foregoing passage, would have come upon England, if the ambitious designs of France had not been checked by the two *grand alliances* formed in the last century. For, without the resistance they made, not only Bretagne, but *all* the territories of the house of Burgundy, *which stretch their boughs unto our seas*, would have been added to her empire; and *we should have been girt about with the coast-countries of ONE mighty monarch, instead of two.* The present state of the Dutch and the Austrian Netherlands is not such as will absolutely remove that fear from any thinking man: but there will be much more reason to dread it, if we either become indifferent to the state of the continent, or, from the load of our debt, shall be unable to assist our confederates there against the invasions of that power, which hitherto nothing has been able to restrain, but the wealth and valour of this nation exerted in defence of the liberty of Europe, wherein it's own is comprised.

P. 98. *Instead therefore of hastening to lay siege to Toulouse, while Louis remained in that city, he declared his resolution, that, out of respect to the person of that king, he would not besiege it.*

For this I have the authority of William of Newbury, the Norman chronicle, Diceto, Brompton, and two contemporary writers of Becket's life, Fitzstephen and John of Salisbury, the latter of whom, from his very

Pere Dan.
Histoire de
France, l. vii.
sub ann. 1158.

intimate connection with that prelate, must have perfectly known all the circumstances of this affair. But Gervase of Canterbury and Hoveden say, that King Henry besieged Toulouse, and lay before it some months. Father Daniel, to reconcile as well as he could these contradictory accounts, has supposed, that, after the town was invested by Henry, and ready to surrender, Louis forced one of the enemy's quarters, and made his way into it; upon which Henry raised the siege. But for this manner of bringing the king of France to the relief of the town he has not a word of contemporary authority. The account given of it by William of Newbury is much the most probable, and consistent with itself: "Idem vero comes, tanti exercitus impetum pertimescens, regis Francorum, qui uxoris suæ germanus et filiorum avunculus erat, auxilium imploravit. Qui Zelando pro nepotibus *festinus adveniens* cum ali-quantâ militiâ Tolosam intravit. Quod cum innotuisset regi Anglorum, personæ regis ibidem consistentis deferens *civitatem oppugnare distulit*, et ad pervadendam provinciam expugnandasque munitiones convertit exercitum."

P. 101, 102. *but in that month they concluded a treaty of peace, the terms of which were very advantageous and honourable to Henry: &c.*

This treaty is not in Rymer, nor any printed book. But there is a very old copy of it among the Harleian Manuscripts in the British Museum, which, I believe, is the only one extant. It is joined to some select epistles of Becket, which seem, by the hand, to have been collected soon after the death of that prelate. This I presume was added to that collection, because Becket, whose name is among the witnesses to it, had a principal share in negotiating it on the part of his master. Not only it appears, that no modern historian has had any knowledge of it; but there is reason to think, that some of those who lived in that age did not know the contents of it; especially of the first part concerning the Vexin, which absolutely justifies King Henry the Second from any imputation of fraud in the method of acquiring that province. A transcript of it may be seen in the Appendix to this book.

P. 103. *It is observable, that the first mention we meet with in history of this imposition on knights fees, which became afterwards very frequent, is upon this occasion.*

The words of the Norman chronicle about it are these: "Rex Henricus iturus in expeditionem prædictam, et considerans longitudinem et difficultatem

“*tatem viæ, nolens vexare agrarios milites, nec burghenses, nec rusticos,*
 “*sumptis LX solidis Andevagensium in Normannia de feudo uniuscujusque*
 “*loricæ, et de reliquis omnibus, tam in Normannia quam in Anglia, sive*
 “*etiam aliis terris suis, secundum hoc quod ei visum fuit, capitales barones*
 “*suos cum paucis secum duxit, solidarios vero milites innumeros.*” (V. Chron. Norman. p. 995.)

This passage expresses with great clearness and precision both the motive and manner of introducing this commutation for personal service in foreign wars.

Gervase of Canterbury also mentions this scutage in the following words: “Hoc anno (1159) rex scotagium, sive scutagium, de Anglia accepit, cujus summa fuit centum millia et quater-viginti millia librarum argenti. De aliis vero terris sibi subjectis *inauditam* similiter census fecit exactionem.” Nevertheless Mr. Madox has shewn, in his History of the Exchequer, that a levy of scutage had been made in this kingdom, before the war of Toulouse, viz. in the second year of this king; but it was only affect upon the bishops and abbots who held *in capite* of the crown; whereas this was general.

There is a passage in the ancient treatise, called Dialogus de Scaccario, written in the reign of Henry the Second, and published by Mr. Madox, from the Black and Red books of the Exchequer, which makes a particular mention of scutage: “Fit interdum, ut imminente vel insurgente
 “in regnum hostium machinatione, decernat rex de singulis feodis mili-
 “tum summam aliquam solvi, marcæ (scilicet) vel libram unam, unde
 “militibus stipendia vel donativa succedant. Mavult enim princeps
 “stipendiarios quam domesticos bellicis opponere casibus. Hæc itaque
 “summa, quia nomine scutorum solvitur, scutagium nuncupatur.” From these words one should think, that scutage had been raised for the defence of the kingdom against invasions. But, besides that the Norman chronicle, which, down to the year 1161, was written by Robert de Monte, a contemporary author, shews us the contrary; the ancient form of charge it was, *pro exercitu, de iis qui non abierunt cum rege* (see History of the Exchequer); and, during this reign, I never find it taken but for some war beyond the English borders. And Lyttelton, in his *Tenures*, says, that *those which hold by escuage* (which is a French translation of the Latin word *scutagium*) *ought to do their service out of the realm* (see Lyttelton’s *Tenures*, Grand Serjeantie, sect. 153.) He also says, that *they who hold by castleward, pay no escuage* (tenures of knight-service, sect. 111.) the reason of which, says lord Coke, was, because castleward was a service *within the realm*. Therefore the words *imminente vel insurgente in regnum*
hostium

Lib. i. c. 22.
tit. Scutagium.

hostium machinatione, cited above from the Dialogus de Scaccario, must be considered as loose and inaccurate.

Mr. Madox supposes, in the History of the Exchequer, that, till the times of King Henry the Third, whenever any scutages were to be levied, the barons and tenants *in capite* did, by the king's command, send in certificates of their respective fees, either *toties quoties*, or, at least, most usually. For it appears by a record, that, in the eighteenth year of Henry the Second, some persons were charged with the scutage of Ireland, under the title, *De iis qui cartas non miserunt*. (See History of the Exchequer, p. 440. c. 16.)

In the passage quoted above, from the Dialogus de scaccario, it is said, that a mark, or a pound, was the scutage usually charged upon every knight's fee. No computation can be made at what rate each knight's fee was charged to the scutage for the war of Toulouse, because, though we know the whole sum produced by it, we are not assured from how many knight's fees it was raised. But, by the greatness of the sum, the rate must have been considerably more than a mark, or a pound. I should suppose, that the scutages varied according to the service for which the military tenant commuted. If he was required to follow the king to a very distant country, the composition to exempt him from the obligation of performing that service was higher. But where it was taken for a war on the borders of England, a lighter might suffice. The first scutage raised by King Henry the Second for the army serving in Wales, was at one pound a knight's fee. This was in the second year of his reign, when the prelates only paid it, as appears by a passage in the Red book of the Exchequer. Yet Alexander de Swereford, who made the collections in that book, under Henry the Third, mentions another scutage for Wales, in the fifth year of Henry the Second, which amounted to two marks for every knight's fee. It must have been charged at the latter end of that year, when we find that some commotions arose in Wales, the king being still abroad in the war of Toulouse. And it is very surprising, that in the abovementioned book there should be no notice taken of the great scutage for that war, but only of this for Wales. I doubt whether this was a scutage. Alexander de Swereford says himself, that it was entered upon the rolls, not *scutagium*, but *donum*; and that some paid it, who did not hold by military tenures. It also appears, that it was determined by the Chief-justice of the Common-pleas in the reign of Edward the Third, *that escuage shall not be granted but where the king goeth in proper person* (see Lyttelton's Tenure, p. 20. tit. Escuage). As therefore Henry did not go himself to this war, this could not be taken

L. Rub. fol.
not. 47. col. 2.
Madox Hist.
of Exchequer.
Escuage, c. 16.
p. 435.

as *escuage*, but must have been granted as an *auxilium*, or *donum*. Mr. Madox observes, that, in Henry the Second's time, aids were called *dona*. (V. Præfat. ad Dial. de scaccario.)

The words of Alexander de Swereford are very exprefs to prove, that no scutage had been raised in England, before the reign of Henry the Second. *Primum omnium scutagiorum, prout rumor ex rotulis ad me devenit, assisum fuit anno regni regis Henrici, filii imperatricis, secundo.* Nevertheless there is an article in the printed copies of King John's *Magna Charta*, taken from Matthew Paris by Dr. Brady, and by Wilkins, in his Collection of Anglo-Saxon laws; which, if it were genuine, would contradict this assertion. It stands thus: "Scutagium de cætero capiatur, sicut capi tempore regis Henrici avi nostri consuevit." Now, as *avi nostri* cannot signify the *father* of John, but may his *great-grandfather*; this would be a proof, that scutage was taken in the time of King Henry the First. But this article is not found in the most authentic copies. And I make no doubt, that it got into Matthew Paris's copy from the charter of Henry the Third, where it stands very properly, because Henry the Second was *grandfather* to that king.

L. Ruber, & Madox, ut supra.

See the Edition of it by Blackstone.

Mr. Madox indeed has mentioned a writ, which he found in the private Archives of Westminster-college, and by which Henry the First grants to the abbot and monks of Westminster an exemption from scutage, for an estate they held of the earl of Chester: but, even admitting the writ to be genuine, it will be no proof against the opinion of Alexander de Swereford; because *scutagium* (as Mr. Madox himself tells us) *when used in an extensive sense, did anciently signify any payment made upon knights fees.* We also know, that it signified *servitium scuti*, or knights-service. And therefore the words of the writ, *Quiete de scutagio et omnibus secularibus consuetudinibus*, may be well understood to mean an exemption from military service, and all other secular customs.

If a military tenant either went in person with the king to a war out of England, or sent another to serve for him, he paid no scutage. Thus, in the eighteenth year of Henry II several persons are charged to *escuage*, under this title, *De scutagio militum, qui non abierunt in Hyberniam, nec milites pro se miserunt.* See Madox of Escuage, Hist. of Excheq. c. xvi. p. 438, 439. Indeed *escuage* in the sense of a pecuniary payment, being a *commutation for a service arising out of a tenure*, viz. the tenure by knight's-service, when that service was performed in another manner, by the military tenant's sending a man to serve for him, such *commutation* could not take place. There was also a difference between this composition by *escuage*, and the *finés* paid to the king by barons and knights holding

holding in chief of the crown, for not serving abroad, when they had been ordered to do so by summons from the king. Earl William de Vernun fined to King John, *pro licentia remanendi*, and *that the king would receive the scutages of his knight's-fees which he held in capite*. In the reign of King Henry the Third, several tenants by knight's-service paid *fin*es to the king, *that they might not take the voyage into Gascoigne, besides the scutages which they voluntarily granted to the king for that voyage*. (See Madox, ut supra, c. xvi. p. 459.) These instances shew, that scutages were not always accepted by the king, in lieu of the duty of personal service from his military tenants. Nor indeed could they; because mercenary soldiers, and chiefs of experience to command them, were not always to be had at the time they were wanted. And it seems to have been in the option of the king, whether he would accept them or not. Mr. Madox has given it as his opinion, "that *personal service* was required " *most chiefly, if not solely, of the tenants holding by knight's-service in* " *capite, ut de corona*. For, if a man held his land of the king by " knight's-service, as of an honour then being in the king's hands, and " not of the crown, such tenant was not indispensably obliged to do *per-* " *sonal service in the king's army*, but was to pay the king escuage when " it was assent. At least this was alledged to be the usage in the reign " of King Edward the Second in the case of Gerard de Wachesham, and " Thomas de Inglestorp" (see Madox, ut supra, p. 454.) I much doubt whether it was so in the times of King Henry the Second; as I see no reason for it in the feudal policy; the tenants of an escheated barony being obliged to perform the same service to the king, that they would have performed to the baron. The same author says, " Sometimes the " barons and tenants by knight's-service were amerced, for not sending " their knights to serve for them in the king's army; and sometimes they " were disseised of their land for not doing their service;" of both which he gives several instances from the rolls (see Madox, ut supra, p. 461.) " But when barons or knights, holding *in capite*, did actual service in the " king's army, for so many fees as they were answerable for; or *if they* " *sent knights in their stead, or if they made fine for the same*, they were " wont to be acquitted of escuage:" (see Madox, ut supra, p. 462.) It must be observed, that, as some knight's-fees were smaller than others, the scutage upon them was also less in proportion.

P. 105. *whereas we find it declared, by the charter of King John, that scutages ought to be assent by the tenants in chief of the crown assembled in parliament.*

Although

Although this clause be left out of all the subsequent charters, yet it appears, by a writ of King Edward the First's reign, cited by Mr. St. John, on the behalf of M. Hampden, in the case of ship-money, that scutage was granted by parliament: "*Datum est nobis intelligi, quod plures sunt qui tenent per servitium militare de nobis, qui contradicunt solvere scutagia, quæ nobis sunt concessa per commune concilium regni nostri.*" And many processes, issued for the levying of escuage granted in Edward the First's time, were released by Edward the Second; *Quia dictum servitium non fuit communiter factum*; that is, says Mr. St. John, that it was not done *per commune concilium regni*. The words of Sir Thomas Lyttelton, concerning this matter, require some observation: Coke upon Lyttelton, sect. 97.

"And after such a voyage royal into Scotland, it is commonly said, that, by authority of parliament, the escuage shall be assessed, and put in certain; that is to say, a certain sum of money, how much every one which holdeth by a whole knight's fee, which was neither by himself, nor by any other for him, with the king, shall pay to his lord, of whom he holds his land by escuage. As, put the case, that it was ordained by the authority of the parliament, that every one which holdeth by a whole knight's fee, who was not with the king, shall pay to his lord 40 s. That he which holdeth by the moiety of a knight's-fee, shall pay to his lord but 20 s. and he which holdeth by the fourth part of a knight's-fee, shall pay but 10 s. and he which hath more, more; and which less, less. And some hold by the custom, that, if escuage be assessed by authority of parliament at any sum of money, they shall pay but the moiety of that sum, and some but the fourth part of that sum. But because the escuage that they Sect. 98. ibid.

"should pay, is uncertain; for that it is not certain how the parliament will assess the escuage, they hold by knight's-service. But otherwise it is of escuage certain, of which shall be spoken in the tenure of socage." The same author says, in his chapter on socage, sect. 120.

"Also if a man holdeth of his lord by escuage certain, i. e. in this manner, when the escuage runneth, or is assessed by parliament, to a greater or lesser sum, that the tenant shall pay to his lord but half a mark for escuage, and no more nor less, to how great a sum, or to how little the escuage runneth, &c. such tenure is tenure in socage, and not knight's-service."

The former chapter on escuage further declares, sect. 100. "And it is to be understood, that, when escuage is so assessed by authority of parliament, every lord of whom the land is holden by escuage, shall have the escuage so assessed by parliament; because it is intended by

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“ the law, that, at the beginning, such tenements were given by the lords
 “ to the tenants to hold by such services, to defend their lords, as well
 “ as the king, and to put in quiet their lords and the king from the Scots
 “ aforesaid. And because such tenements came first from the lords, it
 “ is reason that they should have the escuage of their tenants. And the
 “ lords, in such case, may distrain for the escuage so assessed; or they, in
 “ some cases, may have the king’s writs directed to the sheriffs of the
 “ same counties, &c. to levy such escuage for them, as it appeareth by
 “ the register.”

All that is said about escuage, in the passages here recited, relates to the methods in which it was raised upon the *sub-vassals*: and it is declared that they pay it by right of their tenure, *because it is intended by the law, that, at the beginning, such tenements were given by the lords to the tenants to hold by such services, &c.* And though mention is only made of a war against Scotland, as if they had been bound to serve no where else, Lord Coke observes very rightly, “ that Scotland is only put for an example; for that, if the tenure be in Walliam, Hiberniam, Vasconiam, Pictaviam, &c. it is all one.”

But it is further observable, that, from the words, *after such a voyage royal into Scotland, it is commonly said, that, by authority of parliament, the escuage shall be assessed, and put in certain*, it seems as if the assessment by parliament was posterior to the expedition for which the escuage was to be paid. Whereas it is said by R. de Monte, that Henry the Second took escuage on account of his expedition against Toulouse, before he went thither: “ *Rex Henricus iturus in expeditionem prædictam, et considerans longitudinem et difficultatem viæ, nolens vexare agrarios milites, nec burgenfes, nec rusticos, sumptis LX solidis Andevagensium in Normannia de feudo uniuscujusque lorice, et de reliquis omnibus, &c. secundum hoc quod ei visum fuit, capitales barones suos cum paucis secum duxit, solidarios vero milites innumeros:*” (V. Chron. Norm. p. 995.) Probably it was found more convenient to make the assessments after the service, than before, as it could not be previously known from what number of the tenants by knight-service it was to be taken, because the payment of it might be avoided by those, who either went in person themselves, or sent men to serve for them. But the declaration, that the king would accept it in lieu of personal service, must have been prior to the time of performing the service: for, otherwise the persons concerned would not have known, whether they might have the benefit of such a commutation. Perhaps notice of this may have been given by the summons.

It

It appears, from the passages above-cited, that some military tenants held under condition of paying but half of the escuage assent by the parliament, and others but a fourth. Nay, some there were, who so held, as that they were only to pay half a mark to their lord upon an assessment of escuage, whether higher or lower; which was called escuage certain; and such tenants were not understood to hold by knight's-service, but their tenure was socage. This was a great deviation from the first institution of military fiefs; so great, that it entirely altered their nature. But I find no trace of any such thing in the times that I write of; nor does it appear, that it extended to tenants in chief. All that Sir Thomas Lyttelton says of such tenants is towards the latter end of his chapter on escuage, after having treated of the manner in which it was paid by their vassals: "*But of such tenants, as hold of the king by escuage, which were not with the king in Scotland, the king himself shall have the escuage.*" Sect. 101. Lord Coke says, in his notes to sect. 97. of the same chapter, "*Here is a secret of law included, that, albeit escuage uncertain be due by tenure; yet because the assessment thereof concerned so many, and so great a number of the subjects of the realm, it could not be assessed by the king, or by any other but by parliament; and this was by common law.*" He adds, "*No escuage was assessed by parliament since the reign of Edward the Second.*" Nevertheless it appears, that, when Lyttelton wrote, it was the common opinion, that it should be so assessed. And he seems to speak of it as law.

Lord Coke also says, "And it is to be observed, that, if he that holds of the king by escuage goeth, or findeth another to go for him, with the king, &c. then he shall have escuage of his tenants, that hold of him by such service, *which must be assessed by parliament.* But, if the king's tenant goeth not with the king, then he shall pay for his default escuage, and shall have no escuage of his tenants." This latter assertion is false; for Mr. Madox says, in his History of the Exchequer, that "when the lord, holding in capite, did personal service in the king's army, or paid, or became duly charged with his escuage to the king; he was entitled to have escuage of his tenants for the fees which they held of him, and which he held of the king in capite." And this he proves by records. For instance, in the reign of Henry the Third, Henry de Braybrok had a writ of aid directed to the sheriff, to *distrain the knights who held of him the fees, which he held of the king in capite, for the escuage which he stood charged with at the Exchequer.* Mr. Madox adds, "that, in the elder times, in case the lord was entitled to receive escuage of his tenants, such escuage was usually collected by the lord *per manum suam*, who used to justiciate or distrain his tenants to pay it. Whether it was

Sect. 97, &
sequent.

V. Madox
Hist. Excheq.
c. 16. sect. 8.
Sect. 9.

“all along necessary for the lord to have the king’s leave or authority to collect his escuage, *per manum suam*, or no; such leave or authority was sometimes granted to particular lords.” But he shews, that afterwards escuage was collected by the sheriffs of the counties. “In the twenty-seventh year of Henry the Third, *when escuage was granted to the king by the common-council of the realm*, writs were awarded to the sheriffs of the counties, commanding them to take inquisition by oath of knights, and lawful men, to find what lands were holden of the king, or of others, who held of the king *in capite*, whether of the new feoffment or the old, and to distrain the tenants of such fees, to pay their escuage for the same.”

P. 110. *But as Victor came, and submitted his cause to the council, it gave a reasonable prejudice in his behalf: his adversary was censured as guilty of contumacy; and, after a proper examination of witnesses, he was declared to have been duly elected.*

That he was duly elected, I will not affirm; but certainly the pre-engagement, which it appeared that the cardinals of Alexander’s party had laid themselves under before the election, was contrary to the liberty required by the canons. (V. Radevicum, l. ii. c. 52. 71.) And if the nobility, people, and clergy of Rome had a right to interfere in it (as, notwithstanding the Bull of Pope Innocent the Second, I presume they had) Victor, whom, it seems, they all inclined to support, may, upon the whole, have had a majority of votes in his favour. But though mention is made, in some of the letters which justify his election, of their having very strongly declared themselves on his side, yet the principal stress was not laid upon that, but upon the disqualification of the cardinals his opponents, by the oaths they had taken; because, I suppose, to deny the authority of a papal decree was not thought prudent; and the other plea was sufficient to prevail on the council to determine for Victor.

P. 116. *and prevailed upon them to celebrate the form of a marriage, or public and solemn espousals, between Henry his son, not yet six years old, and Margaret of France, who was still a younger infant.*

V. Diceto
Imag. Hist.
sub ann. 1160.
& 1155.

Diceto says, that Prince Henry at this time was seven years old; but this must be a mistake; for (as he tells us himself in another place) that prince was born on the last day of February, in the year 1155; with which date of his birth the other contemporary historians agree. The same author says, that the princess of France at this time was three years old; but I should suppose her older; because I think, that King Henry would

would hardly have desired to have her sent into Normandy, while she was at the breast of her nurse, as she must have been in the year 1158 if she was but three years old in 1160.

P. 129. *who remained in the monastery of Bourgdieu, in Berry.*

This convent is called, by the historians of those times, *Monasterium Dolenſe*; and Pope Alexander's letters from thence are dated *apud Dolum*, because it was founded by the lords of *Deols*: (V. Boulanvilliers *Etat de la France*, t. ii. p. 201.) A castle adjacent to it is, for the same reason, called *Castrum Dolenſe*. It must not be confounded with Dole in Franche Comté.

P. 134. *Nay, even these biographers themselves acknowledge, that one reason, which induced Henry to promote him to Canterbury, was, because he hoped, that, by his means, he should manage ecclesiastical, as well as secular affairs, to his own satisfaction.*

This is confirmed by Fitzstephen, another of Becket's historians, in the following words: "Statuit ergo rex Angliæ cancellarium suum in archiepis-
"episcopatum promovere, intuitu meritorum personæ, confidens, quod sibi
"ad placitum et nutum, ut cancellarius fecerat, archiepiscopus obsequeretur." V. Stephanid. in vitâ S. T.

P. 147. *they did not deny the words which were laid to their charge; but alledged, that they were spoken when their minds were heated and disordered with wine.*

Giraldus Cambrensis, from whom I relate this particular, tells us, that one of the company said to Henry, "*Perhaps we did say the words we are charged with; and we should have said still worse, if our wine had not failed us.*" As Plutarch ascribes the very same answer to some subjects of Pyrrhus, in his Life of that prince; I rather suppose, that this historian applied the expression he found in that author to a similar case, than that it was used in this instance. But as it is certain he was far from being disposed to invent any fiction to King Henry's advantage, I make no question that this story is true in the main; to wit, that some persons, accused before that monarch of having talked of him too freely, over their cups, pleaded their ebriety in excuse of it, and were generously forgiven. It is observable, that Giraldus particularly mentions the bishop of Worcester, as implicated in this affair; a prelate whose name he would hardly have made use of, without good authority, upon such an occasion. V. G. Cambrenſ. de Vitis ſex Episcoporum coetaneorum. in Angl. ſacra, par. ii. p. 427.

Another remarkable instance of Henry's clemency and good-nature towards the same prelate is given by Fitzstephen. He tells us, that the P. 64, 65.
bishop,

bishop, who was son to Robert earl of Gloucester, and had been bred up with the king under his father's tuition, reproached that monarch, in an angry conversation between them, with having acted unkindly towards his brothers and himself, which was an ill requital of the great services done by that nobleman to him and his family; and also with detaining the revenues of the church. These complaints being made in the hearing of many persons, with great freedom and sharpness, a knight of Aquitaine, who was present, and did not know the bishop, enquired, who it was, that spoke to the king in such a manner? And being told, he made answer, *that it was happy for the king the man was a priest; for had he been a soldier, he would not have left that prince two acres of land.* Whereupon another of the court, thinking to recommend himself by it to Henry, chid and threatened the bishop. But the king took his part, and severely reprimanded the officious zeal of the courtier.

W. Stephanid. P. 148. *The king's good humour seems indeed to have been sometimes too playful, in the eye of the public.*
 in vitâ S. T.
 Cantuariensis,
 p. 16, 17.

Of this Fitzstephen has given us an extraordinary instance. He tells us that one day, as the king and Becket, his chancellor, were riding together through the streets of London, in cold and stormy weather, the king saw coming towards them a poor old man, in a thin coat, worn to tatters. Would it not be a great charity (said he to the chancellor) to give this naked wretch, who is so needy and infirm, a good warm cloak? Certainly, answered that minister, and you do the duty of a king in turning your eyes and thoughts to such objects. While they were thus talking, the man came near; the king asked him, if he wished to have a good cloak? And turning to the chancellor said; *You shall have the merit of this good deed of charity:* then suddenly laying hold on a fine new scarlet cloak lined with furr, which Becket had on, he tried to pull it from him, and, after some struggle, in which they had both like to have fallen from their horses, prevailed. The poor man had the cloak, and the courtiers laughed, like good courtiers, at the pleasantry of the king.

P. 150. *Before her death she retired to the Nunnery of Godstow, near Oxford, and there she died.—Henry bestowed large revenues on the convent, &c.*

In the Dissertation concerning Fair Rosamond, annexed to the fifth volume of Rapin's History of England, translated by Mr. Tindal, fourth edition, the authority of Nicholas Trivet is quoted to prove, that the Nunnery of Godstow was founded by King John. But that it was founded in the reign of King Stephen, and that the body of Rosamond was

was deposited there during the life of her lover, King Henry the Second, appears undeniably from several records, that are published by Dugdale, in the first volume of his *Monasticon*, and in the additions to it annexed to the second. Another mistake made in the Dissertation abovementioned, is the supposing that the bishop of Lincoln, who ordered the body of Rosamond to be removed out of the church, was the famous Grostest, who held that see under Henry the Third; whereas it was done in the reign of Richard the First, anno dom. 1191, by Hugh, bishop of Lincoln; as we are informed by Roger de Hoveden, who lived at that time. (V. Hoveden, f. 405. b. lin. 20. sub ann. 1191. ann. pars poster.) There is in the *Monasticon* a fragment from Leland, which says: "Rosamonde's Tombe at Godestowe Nunnery was taken up a late: it is a stone with this inscription, *Tumba Rosemundæ*. Her bones were closed in lede, and, withyn that, bones were closed yn lettter [leather]: *when it was opened there was a very swete smell came out of it.*"

V. *Monast.*
t. i. p. 525.
ad 529. Ad-
ditament. ad
t. i, ii. p. 884.

P. 161. *A late ingenious French writer has very justly observed, that wearing such ensigns on their shields and appropriating them to distinguish particular families, could not have been the general practice in Europe till after the death of William the Conqueror: for, if it had, his son Robert must have known him by his armour, and could not have ignorantly thrown him to the ground, as hath been related in the book prefixed to this history.*

To this observation I will add, that the laborious Herald, Mr. Sandford, says, in his *Genealogical History of the Kings and Queens of England*, that "*Gules 2 Lions passant regardant or* are the arms assigned to William the Conqueror, as also to Robert duke of Normandy, King William the Second, and King Henry the First, derived (*as tradition tells us*) hereditarily from Rollo, the first duke of Normandy; who is said to have born in his escocheon or shield the same charge, affecting, as several other Norman princes did, that sovereign beast, *the lion*." But then he adds, "I term these arms *attributed, or assigned*, because I cannot find either by monuments, coins, seals, or any contemporary author, that such were in use with these several princes; but that following ages did assign or fix them upon the Norman line, to distinguish it from the succeeding Plantagenets, that did bear *Gules 3 Lions passant guardant or* (King Henry the Second, the first of that race adding to the Norman arms the lion of Aquitaine of the same metal, in a field of that colour, in the right of Eleanor his wife, heir of that country) and for this cause are they painted for the conqueror, upon the tomb of Queen Elizabeth, in Henry the Seventh's chapel at Westminster,

“ Westminster, impaled with those of Queen Maud of Flanders his wife;
 “ arms *attributed* to the foresters and first earls of Flanders to the time of
 “ Robert the Frison: and the arms also of King Henry the First, im-
 “ *paling* them of Queen Maud of Scotland: *when indeed impalements*
 “ *were not known before the time of Henry the Third, if so soon*; as I shall
 “ prove in it's proper place.” Yet the same author shews, that *devices*
 were used in the time of the conqueror, *but taken up and laid down at*
pleasure. And says, “ ’Tis probable the reason *why the shields of that age*
 “ *were left blanks, or of one simple colour or metal, was to receive the impress*
 “ *of every fancy, that either pleased the bearer or the painter.*”

P. 171. *This seems to have been the constant support of the navy: but upon extraordinary occasions danegeld was levied; and, although at the end of that century the name was lost, a like provision was often made, in every age, by our parliaments, for the defence of the British seas and security of the kingdom.*

Rot. Parl. 45 Edw. III. the commons pray, *that the franchises of the sea towns and havens may be allowed to them as heretofore*; and say, *that by default thereof the navy of England is much decayed,* &c. These franchises were, the being discharged of armies and defence at land, and of all subsidies granted in parliament. But Mr. St. John, in his second day's argument for ship-money, observes, that these were for ordinary service: *hidage* and *danegeld* for extraordinary. Bracton speaks of *hidages* as not being feudal dues, but among those grants that were *de necessitate et ex communi consensu totius regni introducta*. (V. Bracton, l. ii. p. 37.) Danegeld was a *hidage*, being laid upon hides of land. Fortescue says, that in his time (under Henry the Sixth and Edward the Fourth) the king had the subsidy of tonnage and poundage for the keeping of the sea, and that it ought to be applied to no other purpose.

See Fortescue
 of absolute
 and limited
 Monarchy,
 p. 44. c. 6.

P. 179. *A knight's-fee seems to have been usually composed in those days of two hides of land, or of two hides and a half.*

Sir Henry Spelman says, “ that the Normans changed the name of a
 “ hide of land, and called it *carue*, a *ploughland*; and, as it seemeth, in
 “ erecting and laying forth their knight's-fees, assigned ordinarily two
 “ *carues* or *ploughlands* to a knight's-fee. For 'tis noted out of the *Black*
 “ *register* of St. Edmond's-bury, that William the Conqueror gave to
 “ Baldwin, then abbot there, eighty ploughlands, from which he might
 “ constitute

“constitute forty knights-fees, *octoginta carucatas terræ, unde feodaret quadraginta milites.*” (V. Spelman’s treatise on Feuds and Tenures, c. 27.) But it appears from the rolls in the reign of Henry the Second, that two knights held five hides of the bishop of Chichester for two knights-fees, and ten hides had been taken from the demesne of that see, to enfeoff four knights, soon after the Norman conquest. By the Red Book of the Exchequer it appears, that in Henry the Second’s reign a distinction was made between knight’s-fees of *the old* and of *the new feoffment*. The latter were those that had been granted after the death of Henry the First; and some of them, being smaller than the former, paid only twelve shillings for scutage, when the former paid twenty. But others of them were charged at the same rate to those payments, and must therefore have been nearly of the same value. I likewise observe in the rolls, that several barons, who had fees of *the old feoffment*, were also possessors of some of *the new feoffment*; and, upon the whole, I see no reason to believe, that a *distinct and inferior order of barons* was constituted by these tenures, as some have thought.

V. Madox
hist. of the
Excheq. c. 15.
p. 400.

V. Mag. Rot.
14 Hen. II.
Rot. 6. de
Auxilio Matil-
dæ filiae regis
Earl of War-
wick and
William de
Albiny.

P. 179. Sir H. Spelman says, that a *mesne tenant*, who had more than a single knight’s-fee was called a *vavasor*, which, he thinks, was a degree above knights: yet we generally find that name applied to any vassal, who held a military fief of a tenant in chief of the crown.

Many proofs might be given of this from books and records of that age. Mr. Selden says, in his Titles of Honour, part II. c. v. sect. xvii. “There were two kinds of knight’s-fees (as to this day also there are); “those that were held in chief of the king; and those that were held by “a mesne tenure, called also anciently *vavasories*. Of the first kind only, “these baronies (as also the baronies or honours of earls) were made; “and they, by *subinfeudation* for the most part, made the second. And “by themselves and others provided at their own charge, or by their “tenants (whom they made by such subinfeudation), they performed “the services reserved by the king. As, if the king gave twenty “knights-fees to be held in chief, or lands to be held by the service of “twenty knights or men at arms (which was the same kind of gift), if “the *patentee* infeoffed others of part to be held under him (for example) “by the service of fifteen knights, then the king was served, at the “charge of his baron the *patentee*, with five knights; and the other “fifteen were supplied by those that held the rest by mesne tenures; “yet so, that, if they failed in their service, the baron was to pay escuage,

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“according

“ according to their number, to the king, and to have his like remedy “ against them.” Concerning escuage much is said in other places of this work ; but I would observe here, that, in using the word *patentee*, Mr. Selden could not mean, that, in the times when this military policy was established, there were any barons *by patent*, but it is significant of the terms on which the lands were granted.

P. 180. *but these instances were extraordinary ; the far greater number of the military tenants in chief having many subvassals.*

See note to
P. 159.

The learned Mr. Justice Wright has well observed, in his Introduction to the law of tenures, that, since it is clear that subinfeudations were warranted by the feudal law, and that they were an original and necessary branch of the feudal policy itself, the doubt whether the king's tenants had a liberty of disposing of any of their lands to hold of themselves could not be very ancient : and he argues strongly to shew, that the first commencement of it was not earlier than the time of Henry the Third, from the statute 34 Edw. III. cap. 15. which makes good all such alienations (or subinfeudations) made by those who held of the king's *great grandfather*, or of other kings before him, expressly saving his prerogative of the time of his grandfather, father, and of his own time.

It will be well worth the reader's while to see all that is said by the above-mentioned writer concerning the restraint laid by Magna Charta, c. 32. on the practice of alienating so much of a fief, as not to leave enough for the performance of the service due to the lord from his vassal, and afterwards by the statutes, *Quia emptores terrarum*, and *De prerogativa regis*. I will only observe, that, though the power of *subinfeudation* seems to have been consonant to the original policy of fiefs, without any distinction between those who held of the king, or of other inferior lords, yet the limitation of it, in all cases, within the bounds prescribed in those laws, for the security of the service on which the tenure was founded, appears also to have been a necessary and inherent condition of all such grants, the departure from which, if not checked, would have been finally destructive to the whole feudal system.

P. 181. *But, in the case of invasions, the common law of the land continued undoubtedly to oblige, not only those tenants, but all the other freeholders, to assist in repelling and driving out the invaders.*

The limitation expressed in the statute of 1 Edw. III. viz. *that no man be compelled to go out of his shire, but where necessity warranteth and sudden*

sudden coming of strange enemies into the realm, I take to have been always the law of England. The statute concludes with a reference to the ancient practice of that law, And then it shall be done as hath been used in times past for the defence of the realm. The first clause of the same act, viz. The king wills that no man from henceforth shall be charged to arm himself otherwise than he was wont in the time of his progenitors, kings of England, refers also to ancient usage, and to the assise of arms in the reign of King Henry the Second, which is again referred to and confirmed by the statute of Winchester in the 13 Edw. I. c. vi.

Ibid. During the government of the Saxons (if we may believe what is said by the compiler of some laws ascribed to Edward the Confessor) the militia of every county was commanded by an annual officer called Heretoch, who was chosen into that office by all the freeholders, in the folk-mote, or county court.

The authority of that collection of laws, in which this passage occurs, I think indeed very slight; but what makes me believe, that the compiler of it did not err in this point, is it's agreement with the ancient German laws, which Sir H. Spelman takes notice of, and seems on that account to consider it as authentick. (V. Spelman's Gloss. p. 288. DE HERETOCHIIS.)

Ibid. Sir H. Spelman supposes, that, after the Normans came in, this command devolved to the earl. And there is great reason to think, that the military power of every county was principally in the earl, during the times of which I write, though it was occasionally exercised by the sheriff, or viscount.

Spelman's words here referred to are in his Glossary under COMES, "Quo edoctus exemplo Gulielmus I, novi utique apud Anglos regni fundamenta ponens, commilitones suos feodalibus exornavit dignitatibus, forte etiam auctioribus quam ævo Saxonum. Nam cessisse jam videtur munus Heretochii comitatus in manu ipsius comitis." That the earls had the chief command of the militia of the county in the reign of William the First, and till after the decease of Henry the Second, appears, I think, from many clear historical proofs: and in all the accounts of those times I meet with no trace of any officer *elected* to such a command.

Ibid. But, whether even the Saxon Heretoch was not subordinate to the earl in his military functions, appears to me very doubtful.

Several reasons induce me to this doubt, and among others this passage in Florence of Worcester, "Talia geri in suo comitatu Godwinus graviter ferens, nimirum commotus ira, *de toto suo comitatu*, scilicet de Cantiâ &c. et filius ejus primogenitus Swanus *de suo* &c. alterque filius Haraldus *de suo* &c. innumerabilem congregaverunt exercitum." From hence it should seem, that the power of the earls over the military force, in their several counties, was, in the Saxon times, superior to that of the *Heretoch* elected by the people. Perhaps that officer was no more than lieutenant under the earl. But indeed (to use the words of the learned Mr. Selden) "most parts of the state of the Saxon government are so obscure, that we can see only steps or torn reliques of them, rather than so much as might give a full satisfaction."

Titles of Honour, c. 5. part ii.

P. 184. *Archers were drawn from the yeomanry, and seem to have served on foot, as attendants on the vassals who held by knight's-service, and at their charge; or, sometimes, under the pay and at the charge of the king.*

See Cotton's abridgement of the records in the Tower, p. 21. 13 E. III. & p. 281. 7 R. II.

I read of no archers on horseback in the age of which I write, unless they were comprehended under the term *servientes*, some of which were light horsemen: but in Edward the Third's reign mention is made in a roll of parliament of two hundred archers on horseback; and, in the seventh year of Richard the Second, the bishop of Norwich offered to serve the king abroad with 3000 men at arms, and 2500 archers, *well horsed and appointed*. And when Lionel earl of Clarence went with an army into Ireland, he carried with him thither many archers on horseback, whose pay was six-pence a man *per diem*, the squires in the same army being rated at one shilling a man *per diem*, the knights, at two shillings, and the bannerets at four shillings. There were likewise some archers at four-pence *per diem*, who, I presume, served on foot. The earl of Ormonde had under him, besides his knights and squires, twenty *hoblers* armed, and twenty not armed; the pay of the former being six-pence a piece *per diem*, and of the latter four-pence. These *hoblers* were Irish horsemen, so called because they served on *hobbies*. How much the strength of the nation was then thought to depend on the skill and valour of its archers appears from a letter of the duke of Guelderland to King Richard the Second, in which he uses this expression, "The tried valour of your people, and *the sharpness of their victorious arrows*, have so far advanced the fame of your magnanimous nation above any of the West, that terror and dread cannot but seize your adversaries."

Ibid. p. 560. 31 H. VI.

In Henry the Sixth's reign the commons granted to the king *twenty thousand*

thousand archers for half a year in his service. And Fortescue says, in his treatise of Absolute and limited monarchy, written in the reign of Edward the Fourth, *that the might of the realm of England most standeth upon* C. 12. *archers.*

P. 185. *Father Daniel observes, that this establishment passed from the demesne of the kings of France into those of his greatest vassals, the dukes of Burgundy, the dukes of Normandy, and several others.*

It must not from hence be supposed (as it has been by some writers) that, till these privileges were granted by Louis le Gros, none had been enjoyed by any cities in France or Normandy. Ordericus Vitalis takes notice, that in the year eleven hundred and six King Henry the First, being favourably received by the citizens of Rouen, *restored the ancient dignities of that city.* “Rex siquidem cum duce Rotomagum adiit, et à civibus favorabiliter acceptus paternas leges renovavit, *pristinæque urbis dignitates restoravit.*” The same author says of the same king, that in a treaty with his brother, the duke of Normandy, he retained only the town and castle of Dumfront in that dutchy, because he had promised the citizens upon oath, that he would never separate them from his demesnes, *nor change their laws and customs:* “Quia Damfrontanis, quando illum intromiserunt, jurejurando pepigerat, quod nunquam eos de manu suâ projiceret, *nec leges eorum vel consuetudines mutaret.*” These laws and customs must have been *privileges* granted to the townsmen, which others did not enjoy; as they were so desirous to prevent their being changed. The enfranchisements of *serfs* in towns, and establishing therein a new military power independent of the nobility, were indeed *innovations*, which took their rise from the institutions of Louis le Gros, and came from France into Normandy, and even into England. Some corporations, which did not before exist, might be also *created* at that time; but many others, I presume, were only *new-modelled*. This seems to have been the case of the city of Rouen at still a later period. For Duchesne has given us a charter, which directs in what manner a mayor shall be elected, and establishes other regulations for the government of that city, but with a reference to the constitution of a former community upon a different model. It is without date, but seems to be from Philip Augustus, by some of the terms therein used. (See Duchesne H. Norm. p. 1066.) It is certain, that in England many cities and towns were *bodies corporate* and *communities* long before the alteration introduced into France by the charters of Louis le Gros.

P. 187.

L. xi. p. 821,
822. apud
Duchesne.

Ibid. p. 788.
sub ann. 1101.

P. 187. *But these the courses of elder times were about this time much altered, and the king, for the most part, was supplied in his wars by contract with the nobility and gentry, to serve him with so many men, and so long, and at such a rate, as he and they by indenture accorded.*

See Cotton's
abridgment of
the records in
the Tower,
p. 11. 13 E.
III.

Sir Robert Cotton seems to date this alteration from the reign of Richard the Second; but we find, by the records of parliament, that, in the thirteenth year of Edward the Third, seven thousand four hundred men at arms, two hundred archers on horseback, and two thousand halberters, *were set out by certain nobles of the counties of York, Nottingham, Derby, Lancaster, and Cumberland, by particular rate.*

Ibid. *Indeed the practice varied much in different ages; though it is plain, from our law books, that the principle of knight-service, due, by the nature of the feudal policy, from all the possessors of military tenures, remained much the same, from the reign of William the First to that of Henry the Seventh; nay, even till Charles the Second abolished those tenures.*

Among the variations from the custom of the ancient feudal tenures we may reckon a clause in the statute of the eighteenth of Edward the Third, which says, that men of arms, hoblers, and archers, *chosen* to go in the king's service out of England, shall be *at the king's wages*, from the day that they depart out of the counties *where they were chosen*, till they return. These, I apprehend, were not men, who served on the ancient plan, according to the duty of their tenures; but were raised by the new practice of agreements and covenants between the king and his barons, or tenants in chief by knight-service, and picked from the several counties. They were not therefore bound, as under the ancient establishment, to serve forty days at their own charges. Yet no changes in the mode produced any in the nature of feudal military service, on which foundation and principle all these contracts were made. By the act of the twenty fifth of Edward the Third, "it is accorded and assented, *that no man shall be constrained to find men of arms, hoblers, or archers, other than those which hold by such services, if it be not by common assent and grant made in parliament:*" which is confirmed by a statute of the fourth of Henry the Fourth, with the following provisor, "so that the lords nor any other, that have lands or possessions of the country of Wales, or in the marches thereof, *shall in no wise be excused of their service and devoirs, due of their said lands and possessions, nor of any other devoirs or things, whereto they or any of them be bound to our*

lord

“ lord the king ; though that the same lords and other have other lands and
 “ possessions within the realm of England. And that the lords, or other, of
 “ what estate or condition that they be, which hold by escuage or other service
 “ due to the king, any lands or possessions within the said realm, be in no wise
 “ excused to do their services and devoirs, due of their said lands or pos-
 “ sessions. And that the lords, knights, esquires, nor other persons, of what
 “ estate or condition they be, which hold and have of the grant, or confirm-
 “ ation of our lord the king, lands, possessions, fees, annuities, pensions, or other
 “ yearly profits, be not excused to do their service to our lord the king in such
 “ manner as they are bounden because of the said lands &c. which was
 not repealed till the act of the twelfth of Charles the Second.

P. 191. *The treatise ascribed to Glanville &c. tells us, that the relief of a knight's fee was then fixed at a hundred shillings, and of lands held in socage at a year's value, by the custom of the kingdom ; but that, with regard to baronies and to serjeanties, there was no determinate rule of law, those who held by such tenures satisfying the king, for the relief due to him from them, at his discretion.*

This disagrees with the charter of Henry the First, which Henry the Second had confirmed : for there it is said, that, upon the death of a baron, or any other tenant who held in chief of the crown, his heir shall not *redeem* his land, as had been done in the reign of William the Second, but shall only pay a *just and lawful relief*; words which evidently imply a known rule of law to direct and ascertain the payment. It is likewise declared, in the most authentic original manuscripts of King John's *Magna Charta*, that one hundred pounds shall be paid, on the death of a baron, by the heir, *as the ancient relief*. We also find by the Norman law-book called *Le Coutumier*, that this was agreeable to the practice in Normandy, from whence these feudal payments were derived to the English. How then did it happen, that, with regard to the reliefs of baronies and of serjeanties, the course of law, in the reign of Henry the Second, was different from that practice, and from the charter of his grandfather, which he had confirmed ?

See this charter in the Appendix to the first volume.

See the charter in Blackstone's edition from the Cotton and Durham manuscripts. V. Coutum. de Norm.

The best solution I can give of this difficulty is suggested to me by observing, that, from the records which Mr. Madox has given us in his History of the Exchequer, it seems that Henry the Second took no more for any barony than one hundred *marks*, which being less than the relief referred to in the charter, the barons could have no reason to complain of his departing from that rule in this point. Another reason, which is mentioned in another part of this book, might induce them to leave it discreti-

See Hist. of the Excheq. c. 10.

See p. 213.

See Pine's En-
graving and
Magna Carta
Johan. in Dr.
Blackstone's
edition.
See also Tyr-
rel's Append.
to his third
volume.

discretionary in the crown, so long as that discretion was favourably used. But the abuse, that was made of their confidence by King John, may have obliged them to deny it to him and his suecessors. For many other instances are to be found in the history of the English Constitution, that ancient laws, or customs, which, in the reigns of good princes, had given way to beneficent acts of prerogative, have been claimed and restored, in after times, as necessary bulwarks to the people against oppression. The words of King John's charter, as they stand in the two Cottonian manuscripts and in that of the church of Sarum, by which Mr. Tyrrel corrected Matthew Paris's copy, are these. "Siquis comitum vel baronum nostrorum, sive aliorum tenentium de nobis in capite per servitium militare, mortuus fuerit, et cum decesserit hæres suus plenæ ætatis fuerit, et relevium debeat, habeat hæreditatem suam *per antiquum relevium*; scilicet hæres vel hæredes comitis de baronia, comitis integra, per centum *libras*; hæres vel hæredes baronis, de baronia integra, per centum *libras*; hæres vel hæredes militis, de feodo militis integro, per centum solidos *ad plus*; et qui minus debuerit, minus det, secundum antiquam consuetudinem feodorum." The two Cottonian manuscripts are the only originals of this charter now extant, that of Sarum being missing. But the copy of it, which is entered in the Red Book of the Exchequer, agrees with these, only instead of *libras* it has *libram* in the section concerning the relief for a barony; which is plainly an error. The charter of the first year of Henry the Third, which Dr. Blackstone has printed from the only original extant, viz. that in the archives of the cathedral at Durham, agrees entirely with King John's in the clause here recited, and so does the entry of it in the Red Book of the Exchequer at Dublin, only that, instead of the words *de baronia integra*, it has *de baronia baronis integra*, but the relief is the same, viz. *centum libras*.

See these charters in Blackstone's edition.

The second charter of Henry the Third granted in the year 1217, which Dr. Blackstone has printed from the original in the Bodleian library, the only one extant, has the same clause word for word; and so has the Talbot manuscript, from which Dr. Blackstone has published the charter of the ninth year of that king, and also the Durham manuscript, which the Doctor calls *an original of inestimable value*. But the entry made in the ancient book at Guildhall of the charter of the year 1217, instead of *libras* has *marcas*, in the section which relates to the relief of a barony; and the same reading is found in all the charters of *inspeximus* of the twenty fifth and twenty eighth of Edward the First, which have been collated by Dr. Blackstone with the Talbot manuscript of

of the charter of the ninth year of Henry the Third, and also with that of Durham. What gives some authority to this alteration of pounds to marks is a record which Mr. Madox has cited, and by which it appears, that, in the thirty fifth year of King Edward the First, John de Ratynden, cousin and heir of Alice Mucegrofs, paid xi l. iis. iid. ob. q. relief, for all the lands which Alice held of the king *in capite*, viz. for the sixth part of the barony which Hugh Dyve formerly held. In the twenty first year of King Edward I, Alice was charged with xxv marks relief for the said sixth part of a barony; the relief for a whole barony being then charged at *one hundred pounds*. But now, by the *Magna Carta regis de libertatibus Angliæ* (which charter the king by his writ, *quod est inter communia de anno xxix*, commands to be observed in all points), the king would take but one hundred marks for the relief of a barony: and therefore John de Ratynden is charged for the same portion of the said barony at the rate of a hundred marks, *et non de tanta summa pecuniæ*, as Alice was charged at, viz. a hundred pounds. Mr. Selden also cites in his Titles of Honour, a roll of the sixth year of Edward the Third, by which it appears, that, in the twelfth year of Edward the First, Humfrey de Bohun was charged with fifty marks for a third part of the fiefs which had belonged to Ada de Portu, and with fifty marks for a third part of the honour of Breghnoc, which was a greater sum than was paid by John de Bohun to Edward the Third, “*eo quod relevium prædictum oneratum fuit tanquam pro tertia parte prædictarum baroniarum ante confectionem Magnæ Cartæ, de libertatibus Angliæ, quo tempore relevium pro baronia assessum fuit ad c libras, et post confectionem ejusdem Cartæ ad c marcas tantum, juxta quarum c marcarum ratam prædictus Johannes de Bohun oneratur superius de relevio dicti avi sui pro partibus dictarum baroniarum, &c.*” In this record the words *ante et post confectionem Magnæ Cartæ de libertatibus Angliæ*, can mean nothing but *before and after the confirmation of the great charter of Henry the Third*, which (as it is expressed in the other record cited by Mr. Madox) the king, by his writ *quod est inter communia de anno xxix*, commands to be observed in all points. For by this record it appears, that, in the twelfth, and by the other, that, in the twenty first year of Edward the First, the relief for a barony was *a hundred pounds*. The alteration therefore was made by the charters of *inspeximus*, but how they came to vary from the original charter of the ninth of Henry the Third, so much to the prejudice of the royal revenue, it is hard to conceive. On the other hand, many reasons forbid one to suppose that it stood so in that charter. For, besides that the two original manuscripts,

History of the
Exchequer,
c. x. p. 220. l

See Titles of
Honour, c. v.
par. ii. sect.
11.

See Madox's
History of the
Exchequer,
c. x. p. 218.

scripts, cited before, have it *libras*, the same reading is found in the authentick entry of it in the Red Book of the Exchequer at Westminster: and it likewise appears by the rolls, that in the very year when the said charter was granted, viz. the ninth of Henry the Third, Walter de Clyfford was charged with a hundred *pounds* for his relief *as for a barony*. I have shewn before that the authentick transcripts of all the former charters have *libras*, not *marcas*. And if in King John's time the *ancient relief* was a hundred *pounds*, it was so in Henry the Third's and Edward the First's. But further, it is evident by the great roll of the tenth year of Richard the First, that a hundred *pounds* was then thought the *reasonable relief* for a barony. Edward the First must have been therefore deceived in this matter by those who made the charters of *inspeximus* for him. There being no stops in the manuscripts, it is hard to determine, whether the words *ad plus* after *centum solidos* relate only to *them*, or to the preceding reliefs of earldoms and baronies in the same clause; but I rather think that they only belong to the *centum solidos*.

By the laws of William the Conqueror, the reliefs of earls, barons, and vavasors, are to be only their horses and arms, like the *Heriots* of the Saxons: which seems to have been enjoined by that prince to accommodate the Norman custom in this respect to the Saxon; forasmuch, as many of those laws are Edward the Confessor's revived and confirmed. (See Ingulph. and Wilkins Leg. Gul. Conq. p. 22, 23, 24.) But it is observable, that the number of horses and arms required thereby as the lawful relief for an earl, is double to that for a baron, and that for a baron is double to a vavasor's: whereas it has been shewn, that the charters make the relief for a baron the same with that for an earl (or but a third less, even if we read *marks* instead of *pounds*), and allow no more than a hundred shillings for any knight's-fee, which falls very short of one half of the baron's relief. I therefore presume that those laws were repealed, and that *the just and lawful relief* in the charter of Henry the First did not refer to what they had established, but to the Norman relief, which was the same as the subsequent charters declare.

C. x. p. 220. Mr. Madox takes notice, in his History of the Exchequer, that, although baronies differed much in the number of fees whereof they consisted, the relief of each was the same: which proves, that it could not be a fourth part of the value of the annual income arising out of the barony; as some have supposed.

According to the author of the Dialogue de Scaccario, the relief of a hundred shillings was only fixed in his time (under King Henry the Second)

Second) for knight's-fees held of the barons, or escheated to the king; not for those that were immediately held of the crown. But no such distinction is made by Glanville, and in the charters of King John and Henry the Third it is said, "that the heir or heirs of an entire knight's-fee, which was held in chief of the king, should pay the ancient relief, which was but a hundred shillings at most, and that he who owed less should pay less, according to the ancient custom of fiefs."

See the charters of Blackstone's edition.

P. 196. He tells us also, that it was a duty incumbent on the lord, to offer a proper match to a female ward in his custody, as soon as she was of an age to marry, and also to pay her a reasonable portion. These regulations, and the profit given, by a feudal custom in these times, to the king and inferior lords, on the marriage of their vassals, conduced to promote propagation, and the encrease of the people; for it is probable that few remained long unmarried.

The duty of the lord to offer a proper match to a female ward in his custody is enforced by the statute of Westminster, in the third of Edward the First, c. 22. which says, *that if the lord, to whom the marriage belongeth, will not marry heirs female, after they have accomplished the age of fourteen years, but for covetise of the land will keep them unmarried, he shall not keep, by reason of marriage, the lands of such heirs female more than two years after the term of the said fourteen years. And if he do not marry them within the said two years, then shall they have an action to recover their inheritance quite, without giving any thing for their wardship or their marriage. And if they, of malice, or by evil counsel, will not be married by their chief lords (where they shall not be disparaged) then their lords may hold their land and inheritance until they have accomplished the age of an heir male, to wit, of one and twenty years, and further, until they have taken the value of the marriage.* The foundation of this power, given to the lords of heirs female refusing to marry where no disparagement would ensue, was the profit that such lords would have made of their marriage; and the reason of allowing such profit was the loss sustained by their lords in giving up their lands, on the marriage of the wards, before the wardship was determined. With regard to heirs male, it had before been declared by the statute of Merton; "that if an heir (of what age soever he be) will not marry
C. vii.
"at the request of his lord, he shall not be compelled thereunto; but
"when he cometh to full age, he shall give to his lord and pay him as
"much as any would have given him for the marriage before the receipt
"of his land; and that, whether he will marry himself or not: for the
F 2 "marriage

“ marriage of him that is within age of mere right pertaineth to the lord of the fee.”

C. vii.

The same statute also said, “ that if an heir, being fourteen years old, or above, unto his full age, should marry without licence of his lord, *to defraud him of the marriage*, and his lord offer him reasonable and convenient marriage, without disparagement, then his lord shall hold his land beyond the term of his age, that is to say, of one and twenty years, *so long that he may receive the double value of the marriage after the estimation of lawful men, or after as it hath been offered before, without fraud or collusion, and after as it may be proved in the king’s court.*”

From hence it is evident, that what may be concluded, from the silence of Glanville, *not to have been law* in the reign of Henry the Second, was now become law, namely, *that the marriage of a male ward, within age, of mere right pertaineth to the lord of the fee*; and was so far considered as a profit due to him, that, although he could not compel his ward to marry, yet he might demand as much as any would have given him for the marriage, and the ward was to pay it to him, *whether he married or not*. It appears also, that, when the statute of Merton was made, the value of such marriage might be legally estimated; and it was declared, that the penalty of *defrauding the lord thereof*, by a marriage without his consent, if a reasonable and convenient one was offered by him, should be double that value. But if a female heir was married, though with her father’s consent, without that of her lord, the penalty was a forfeiture of the whole fief for ever, *secundum jus et consuetudinem regni*, says Glanville, l. vii. c. 12. which still continued to be law under Henry the Third.

Ibid. Glanville takes notice of only three kinds of aids, which the feudal lord had a right to demand from his vassals, &c.

There is a remarkable conformity between the ideas of ancient Rome, on the reciprocal duties of *patrons* and *clients*, and those of the feudal law on the reciprocal duties of *lords* and *vassals*. I cannot better shew this than by repeating the words of the learned Dr. Chapman, in his Essay on the Roman senate. He says (p. 10, 11.) that, by the institutions of that commonwealth, “ the patrons were obliged to assist their clients *gratis* with their advice and credit upon all occasions, and defend their persons and properties in all civil and criminal prosecutions: in return for which, the clients were directed

“to contribute to the fortunes of their patron’s daughters, if their own
 “circumstances did not enable them to marry them suitable to their birth;
 “to their ransom, or that of their children, who happened to be taken
 “by the enemy; to the payment of any fines, or costs of suit, they might
 “be cast in; or the expence incurred by canvassing for any public office.”

Agreeable to these in a great degree are the obligations of *defence*, *protection*, and *warranty*, on the part of the feudal lords, and the *aids* mentioned by Glanville in the passage referred to above, together with the *aid of ransom*, on the part of the feudal vassals. Yet it must be observed, that the whole system of feudal duties arose from the tenure of lands; whereas those established between the Roman patrons and their clients were neither founded upon any territorial connexion, nor were they of a military nature, as all feuds originally were; nor was any jurisdiction inherent in the patrons over their clients, as in the feudal lords over their vassals; nor was any oath of fealty due from the clients to their patrons, as from the feudal vassals to their lords. On which accounts the learned Craig has justly rejected the notion of the policy of feuds being derived from these institutions.

V. Craig, De
 Jur. Feudali,
 l. i. tit. 5.
 c. 6.

Ibid. *Another was to contribute towards his expence in making his eldest son a knight, &c.*

According to Breton, no lord could demand this aid of his tenant, if he were not himself a knight.

Chap. des
 prises des
 avres.

P. 198. *which ceremonies denoted (according to Bracton) on the part of the lord, protection, defence, and warranty; &c.*

Warranty signified an obligation on the feoffor to warrant the seisin or possession of the feoffee in his land: or, if he could not maintain it, to make him satisfaction by rendering to the value of the fee if it was evicted. (See Wright on Tenures, p. 153, 154.)

Ibid. *After the vassal had said this, he was to receive a kiss from his lord, and then rising up was to take the oath of fealty in the following words:*
 “Hear this, my lord, &c.

Lord Hale says, in his History of the Pleas of the Crown, c. x. p. 62, 63. “The oath of fidelity or fealty is of two kinds, that which is due by tenure, whether of the king or mesne lords, which is *ratione feodi vel vassallagii*, and hath a special relation to the lands so held, and is set down by Lyttelton, c. 19. *Hear you, my lord, &c.* Touching this feudal fealty, or fealty by reason of tenure, I have not much to do in
 “this

“ this place. The other kind of fealty is that oath, which is called *fidelitas ligea*, or *alligiance*, and performed only to a sovereign prince, and therefore regularly ought to be performed by all men above the age of twelve years, whether they hold any lands or not. The tenor of this oath, according to Fleta, 1. iii. c. 16. sect. 22. runs thus: *Hoc auditis, circumstantes, quod fidem regi portabo de vita et membris, et terreno honore, et arma contra ipsum non portabo: Sic me Deus*” &c. Thus Lord Hale — but I would observe hereupon, that I find no proof that the words *et arma contra ipsum non portabo* were in any oath of allegiance till after the times of King Henry the Second. His lordship goes on, “ According to Briton, who wrote about the fifth of Edward the First, c. 29. (which is also mentioned in Calvin’s case, 7 Co. Rep. 6.) the common form of the oath of allegiance taken in Leets, runs thus: *Ceo oyez vous, N. bailife, que jeo A de ceo jour en avant ferray feal et leal à notre seigniour E. roy d’Angleterre et a ses heires, et foy et lealte luy porterai de vie et de nombre, et de terrien honour, et que jeo lour mal ne lour damage ne savorai ne ovray, que jeo ne le defendray à mon poyer, si moy ayde dieu et ses saynts.* This is the form of the ancient oath of allegiance or fidelity to the king, and as it is used at this day, &c. It is comprehensive of the whole duty of a subject to his prince, and therefore hath obtained for above six hundred years in this kingdom.” For the better explaining of the difference between the two kinds of fealty, I will suppose, that, in the times when the feudal law was in it’s vigour, a subject of England, who had held a fief of the king, should, by some offence or defect of his duty as a vassal, have incurred a forfeiture of that fief, and have actually lost it; in that case it is evident, the feudal connexion between him and his sovereign would have ceased and determined; but he would still have been under the bond of fealty and allegiance, which he owed to the king as his subject.

P. 199. *Homage done to the king was called lige homage, &c.*

I do not mean to assert (as some very eminent writers on feuds have done), that there was no other *lige homage* than what was done to the king. For the contrary appears by many ancient records, particularly by the charter containing the agreement between King Stephen and Henry Plantagenet, then duke of Normandy, in which it is said by the former, “ *Comites etiam et barones mei ligium homagium duci fecerunt, salva mea fidelitate, quam diu vixero et regnum tenebo.*” Which words also demonstrate that there might be a *reserve* or *saving* in lige homage. A late French

French historian mentions a charter, in which the Sire d'Aprémont engages to do *lige homage* to the king of France for his land of Briente sur Meuse, and promises to *serve him against all men, except the bishop of Metz*. The same author says, on the authority of the *Assises of Jerusalem*, that, in the case of a war between two *lige lords of the same vassal*, such vassal was bound to aid and succour him to whom he first had engaged his allegiance, *because (say the Assises) he could not do homage to the second, but with a saving of his fealty to the first*.

Abbé Velli
Hisor. de
France, t. vi.
p. 219. Louis
IX.

P. 200. *We are assured by contemporary writers of the greatest authority, that, in the reign of William the Conqueror, lige homage was done, and fealty was sworn to that king, not only by his own immediate tenants, but all the considerable subvassals: &c.*

Ingulphus says, "Reversusque in Angliam (Rex Wilhelmus scilicet) P. 79.
"apud Londonias hominium sibi facere et contra omnes homines fidelitatem
"jurare omnem Angliæ incolam imperans totam terram descripsit" &c.

What we are to understand by *omnem Angliæ incolam*, is explained by other historians. Florence of Worcester and Simeon of Durham say,

"In hebdomadâ Pentecostes suum filium Henric. ap. Westm. ubi

"curiam suam tenuit armis militaribus honoravit. Nec multo post man-

"davut ut archiepiscopi, episcopi, abbates, comites, barones, cum suis

"militibus, die cal. Aug. sibi occurrerint Saresbiriæ. Quo cum venis-

"sent, milites illorum sibi fidelitatem contra omnes homines jurare coegit."

And Hoveden has the same words; only, after *barones*, he adds *vice-*

comites. The Saxon chronicle also says, speaking of the same assembly

held at Salisbury, by William the First, "Ubi ei obviam venerunt ejus

"proceres, et omnes prædia tenentes, quotquot essent notæ melioris per

"totam Angliam hujus viri servi fuerunt, omnesque se illi subdidere,

"ejusque facti sunt vassalli, ac ei fidelitatis juramentum præstiterunt se

"contra alios quoscunque illi fidos futuros." Henry of Huntington

says, "Wilhelmus rex fortis, anno decimo nono regni sui, cum de more

"tenuisset curiam suam in natali apud Glocestre, ad Pascha apud Win-

"cestre, ad Pentecosten apud Londoniam, Henricum filium suum juni-

"orem virilibus induit armis. Deinde accipiens hominium omnium ter-

"rariorum Angliæ, cujuscunque feudi essent, juramentum etiam fidelitatis

"recipere non distulit." We are therefore to understand *omnem Angliæ in-*

colam in Ingulphus to mean all the military tenants of the barons, and

all the considerable landholders in England, of whatever lord they held

their fiefs. For, though Ingulphus mentions London as the place where

this was done, and Henry of Huntington seems to confirm that account,

I make

V. Flor. Wig.
& S. Dunc.
sub ann. 1086.

V. Hoveden
Ann. sub ann.
1086.

Chron. Sax.
sub ann. 1085.

V. Huntingd.
Hisor. f. 212.
sub ann. Wil.
I. 19.

I make no doubt it was at Salisbury, as is affirmed by the other historians abovementioned, and that he and Henry of Huntington have confounded that assembly with the *curia* held at London a little before.

P. 202. *It also appears from the words of William of Malmfbury, that, homage was done and fealty sworn to the heir apparent of the crown, in the reign of Henry the First, by all the freemen of England and Normandy, of whatever order or rank they were, and to whatever lord they were vassals."*

W. Malmfb.
de H. I. l. v.
f. 93.

The words of Malmfbury are these: "*Filium habuit Rex Hen. ex Matilde, nomine Wilhelmum, dulci spe et ingenti curâ in successionem educatum et pervectum. Nam et ei, vix dum XII annorum esset, omnes liberi homines Angliæ et Normanniæ, cujuscunque ordinis et dignitatis, cujuscunque domini fideles, manibus et sacramento se dedere coacti sunt.*" Certainly these words, like the *omnem Angliæ incolam*, in the citation from Ingulphus given in the last note, must not be construed too literally, but mean the *omnes prædia tenentes, quotquot essent notæ melioris*, the most considerable landholders of every order and degree. For the numbers of the *liberi homines Angliæ et Normanniæ* were too great to be brought all together, in either country, without extreme inconvenience; and the performance of the ceremonies of doing homage, and swearing fealty, would have taken up too much time, and been too fatiguing to the prince who received it from them.

Ibid. Glanville tells us, that women could take the oath of fealty, but could not do homage; and that, if they were married, their husbands were to do homage for them.

L. II. sect. 87.

Sir Thomas Lyttelton says, in his Book upon Tenures, "that if a woman sole shall do homage, she shall not say, *I become your woman*; for it is not fitting that a woman should say, *that she will become a woman to any man but her husband, when she is married*: but she shall say, *I do to you homage, and to you shall be faithful and true,*" &c. Upon which Lord Coke remarks, "that when Glanville says, *a woman shall not do homage*, he is to be understood, that she shall not do *compleat homage*." But I should rather believe, that, in Glanville's time, single women did none, and that the alteration in the form, which is mentioned by Lyttelton, was an expedient found afterwards, to avoid the objection of an indecency in their homage; as it was also in the case of ecclesiasticks. From the obligation laid on the husband to do homage for the wife it naturally followed, that the barony of a wife, as well as every

every other fief requiring homage, was, in effect, made over to the husband; and therefore in those days many barons came to parliament in right of their wives, and by virtue of their marriage were accounted peers of the realm. It has been observed in this History, that the same notion extended to dukedoms and principalities in many parts of the continent.

P. 205. *And it was a general maxim of the feudal law, that a forfeiture of the property of the lord in the fief, and of all his dominion over his vassal, was as necessary an effect of any great breach or neglect of the duty which he owed to the vassal, as a forfeiture of the fief was of a similar crime or neglect in the vassal.*

The learned Craig, in his excellent book on the Feudal Law, has these words: "De dominorum autem offensâ hæc generalis regula observanda est, ubicunque vassallus ex suâ offensâ, sive delicto in domino, feudo privatur, e regione dominus, si idem in vassallum deliquerit, directo dominio privatur, etiamsi dominus offensum commiserit antequam vassallus sive vassalli hæres juraverit, nisi forte jurare requisitus non juraverit." And then he enumerates several offences, which if the lord committed against the vassal, he was thereby deprived of his superiority or dominion over him. (V. Craig, de Jure Feudal. lib. iii. tit. 6. sect. 13.)

Lord Coke, in his learned notes on the chapter concerning Homage in Lyttelton's Tenures, calls fealty and homage *a perpetual league between the lord and the tenant*. "And so firm and strong (says he) was this league, that by the ancient law of England, *Nil facere potest tenens quod vertatur domino ad exhereditationem vel etiam atrocem injuriam. Nec dominus tenenti e converso. Quod si fecerit, dissolvitur et extinguitur homagium omnino, et homagii connectio et obligatio, et erit inde justum judicium cum venerit contra homagium et fidelitatis sacramentum, quod in eo in quo delinquant puniantur, sc. in personâ domini, quod amittat dominium, et in personâ tenentis, quod amittat tenementum.*" (V. Bracton Fol. 80. Britton Fol. 174.)

From hence arose the feudal term *to defy* (*diffidare*); that is, to declare the dissolution of the faith reciprocally pledged between the lord and the vassal. And thus we find, that, in the times when the feudal law was in it's vigour, not only the vassals *defied* their lords, upon certain occasions, but the same ceremony was used by the lords to their vassals, nay even by the king himself. For Matthew Paris says, that in the year 1233 King Henry the Third *defied* the Earl Mareschall. His words are these: "Et his ita gestis, rex, de consilio episcopi Wintoni-

V. Mat. Paris,
Hist. Angl.
H. III. p. 388.

V. Mat. Paris,
Hist. Angl.
H. III. p. 391.

"ensis, *Marescallum diffidavit per episcopum Menevensem, et sic iussit*
 " *contrà eum arma movere, et ejus castella obsidere.*" Nor can any
 thing better shew the opinion of that age concerning the right of resist-
 ance in the vassal against his lord, tho' that lord was the king himself,
 than the account which the same author gives us of a discourse between
 the above-mentioned earl, and one sent from the king to expostulate with
 him, and shew that he ought to submit himself to the king's mercy. I
 will therefore transcribe here some passages from it, and add a few re-
 marks. The messenger said, that he had heard several of the court de-
 clare, it was the duty of the mareschall to make this submission, "*quia*
 "*fecit injuriam domino suo, qui, antequam rex invaderet terram aut perso-*
 "*nam marescalli, ipse invasit terram domini regis, combussit, destruxit, et*
 "*homines interfecit.*" Here the complaint of the earl's having commit-
 ted an offence in taking up arms against the king is made to consist en-
 tirely in his being *the aggressor*. But he goes on to say, "Et si ille dicit,
 " *se hoc fecisse ad tuitionem corporis sui et hæreditatis suæ, dicunt quod*
 " *non; quia in ipsius corpus et exhæredationem non fuit unquam ali-*
 " *quid machinatum. Nec ob hoc tamen deberet prorumpere contra dominum*
 " *suum, donec oculata fide cognosceret regem contra ipsum talia cogitare, et*
 " *ex tunc liceret talia attemptare.*" In these words, the only limitation
 put to the right of the earl to defend his person or property against
 the king is, that he ought not to break out into an open revolt, till
 he had ocular proof of the king's designing such things against him.
 His answer (as given us by Matthew Paris) was first to deny the
 charge of his being the aggressor: "Non est verum, *quia rex ipse,*
 " *cum semper paratus essem stare juri et judicio parium meorum in cu-*
 " *ria sua, et per internuntios plures pluries petii illud, quod ab ipso mihi*
 " *semper extitit denegatum, terram meam violenter ingressus contra omnem*
 " *justitiam invasit.*" He pleaded, that the king had denied his petition
 to be brought to a legal trial in the king's court by the judgement of his
 peers; and had, against all justice, invaded his lands; notwithstanding
 which, he had made peace with him to his own prejudice; but con-
 ditionally, that, if the king should not observe the articles of that peace,
 he should be free of homage to him, as he had been before: "*Quod*
 " *ego essem extra homagium suum et diffiduciatus ab eo; sicut prius fui*
 " *per dominum episcopum Menevensem.*" Wherefore, the king having
 broken most of the articles of the peace or agreement between them,
 and eagerly desiring to deprive him of his estate and liberty (as he could
 prove), he had a right to recover his own, and to weaken the king's
 power by all possible means: "*Unde cum fere in omnibus articulis in*
 " *forma*

“*forma pacis deficeret, licuit mihi, juxta conventionem meam, quod meum erat recuperare et posse suum modis omnibus debilitare; maxime cum ad meam destructionem et exhæreditationem et corporis captionem anbelaret: et hoc pro certo didici, et, si necesse est, probare possum.*” He goes on to say, that soon after the peace, before he had taken arms to defend himself, the king had deprived him of his hereditary office of mareschal, *without judgement of law*, and refused to restore it to him: which shewed a determination to keep no peace with him; for which reasons *he thought himself absolved from his homage by the king himself*, as he had been before their late agreement; and alledged, *that it was lawful for him to defend himself, and by all means to resist the malice of the king’s counsellours*: “Et quod magis est, post pacem per dies quindecim, antequam Walliam intrarem, aut ab aliquo me defenderem, *sine judicio* spoliavit me ab officio Mareschalli, quod jure hæreditario ad me pertinet et possedi; nec aliquo modo ad illud me restituere voluit requisitus. Unde aperte dici, quod nullam pacem voluit mihi observare, cum post pacem deterius quam, ante me, pertractarat. Unde homo suus non fui, sed ab ipsius homagio per ipsum absolutus; cum ad primam diffidationem redirem, juxta dictam conventionem, ut prædictum est. Quapropter licuit et licet me defendere, et malitiæ consiliatorum suorum modis omnibus obviare.”

Being told of the great wealth and power of the king, which would enable that prince to bring against him more *foreigners* than he could procure to aid him, he answered, that the king was richer and more powerful than he; but less powerfull than God, *in whose justice he trusted, while he maintained and vindicated his own rights and those of the nation*: That he did not confide in *foreigners*, nor seek their confederacy; nor would he ask their assistance, if not compelled thereto by an unforeseen and immutable necessity: “*Rex ditior me est et potentior: verum est. Sed non potentior est Deo, qui est ipsa justitia, in quem confido in conservatione et persecutione juris mei et regni. Nec confido in alienigenis, nec ipsorum appeto confæderationem, nisi, quod absit, inopinata et immutabili fuero compulsus necessitate.*” And in answer to the charge brought against him by the king’s counsellors, that, in hatred and to the damage of the king and kingdom, he had confederated himself with the king’s enemies, particularly the French, the Scotch, and the Welch, he denied the fact as to the French, and justified his confederacy with the King of Scotland and the Prince of North Wales, because they were, not enemies but vassals to the king, till, by injuries which they had received from the king and his counsellors, they had been driven from their fealty, (as he also had been) against their will, and by compulsion. For which

V. Mat. Paris,
Hist. Angl.
H.III. p.392.

V. Mat. Paris,
Hist. Angl.
H.III. p. 393.

reason he had confederated himself with them; that, being united together, they might better prosecute and defend their rights, of which they had been unjustly deprived, than they could being separate: "*Item proponunt contra marescallum consilarii regis, quod confœderatus est capitaneis inimicis ejus; videlicet Francigenis, Scotis, et Wallensibus, et videtur eis hoc fecisse in odium et damnum domini regis et regni. Ad hoc dicit marescallus, quod de Francigenis falsum est simpliciter. Quod dictum est de Scotis et Wallensibus, et (quod) videtur hoc fecisse in odium et damnum regis, similiter falsum est, præterquam de rege Scotiæ et Leolino principe Northwalliæ, qui non inimici, sed fideles ejus fuerunt, quousque per injurias ipsis a rege et ejus consiliariis illatas a fidelitate sua inviti et coacti, sicut et ego, alienati sunt. Et propter hoc cum illis confœderatus sum, ut melius simul, quam separati, jura nostra perquiramus et defendamus; a quibus injustè privati sumus, et in magna parte spoliati.*"

From hence it appears, that the law of England in those days allowed no confederacy of the vassals of the crown with any foreign power, unless in the case where a foreign king, or prince, being himself a vassal of the crown, was oppressed unjustly by the king, and forced to confederate himself with his con-vassals, for their mutual defence; which kind of association was deemed to be legal, and no treason against the king or kingdom. But I would observe, that this must have rendered it very dangerous for the king to have a foreign prince his vassal, particularly one who was so near a neighbour to him as the king of Scotland.

I shall conclude my citations from this very remarkable part of M. Paris's History with some words of the Earl Mareschall, which shew that he thought it not only lawfull, but a duty, to resist the invasion of his rights by the king.

Ibidem,
P. 392.

"*Nec hoc esset honor regis, quod voluntati suæ consentirem quæ non esset ratione subnixa: imo, facerem sibi injuriam et justitiæ, quam ipse in subditos exercere debet et conservare. Et malum exemplum darem omnibus, videlicet, deferendi justitiam et juris persecutionem, propter voluntatem erroneam, contra omnem justitiam, et (in) injuriam subditorum. Nam ex hoc appareret, nos diligere plus possessiones nostras mundanas, quam ipsam justitiam.*"

P. 211. Yet it must be understood, that the honour, or barony, so created by the crown, or so delivered back again out of the hands of the king, was annexed to certain lands, which were composed of knights fees, and held of the crown by knight service.

That baronies in England, distinct from grand-serjeanties, were all territorial till long after the times of which I write, cannot be disputed.

" But

“ But (to use the words of Mr. Madox) “ It is to be remembered, that
 “ a city or town could not be the head of a barony. When a town
 “ was part of a barony, it was only part of the demesnes of a barony.
 “ But if there was a castle there, the castle was usually the head of the
 “ barony. For example, the town of Richmond in Yorkshire was part
 “ of the demesne of the honor of Richmond: but the castle was the *ca-*
 “ *put honoris.*”

V. Baronia, c.
i. p. 17, 18.

To which I will add, that anciently Arundel Castle seems to have been the head of the barony annexed to the earldom of Suffex; for which reason the earls of Suffex were called earls of Arundel. Mr. Selden says, in his *Titles of Honour*, “ But otherwise (saving in this
 “ case where grand-ferjeanty was alone reserved) the baronies, as I con-
 “ ceive, consisted of such knights-fees as we have yet spoken of, but not
 “ of any certain number of them. And the *chief seats* of the barons, in
 “ any part of those fees, were called *capita baronum.*” It was not there-
 fore necessary that the *head of a barony* should be a castle; but, when
 there was a castle upon a barony, *that* was deemed *the head of it* in the
 common usage of those times.

C. v. sect. 17.

P. 212. *Besides the military service, which every baron was obliged to, in virtue of his fief, he was also bound to attend the king in his parliament and supreme court of justice, to assist in his judgements, and give him faithfull counsel in all matters concerning the dignity of his crown and the good of his realm.*

Lord Burleigh says, in one of his Letters, *that nobility was nothing else but ancient wealth in a family.* By this he meant that nobility was in ancient times *territorial*, and annexed to the possession of hereditary lands. Monsieur Voltaire, in his additions to his *General History*, after
 observing that at Venice, and in the ancient republicks of Italy, *nobility*
 was attached to *dignity*, to *employment*, and not to *lands*, says, “ *that every*
 “ *where else nobility became the right of possessors of land.* The *Herren* in
 “ Germany, the *Ricos Hombres* in Spain, the *Barons* in France and Eng-
 “ land, *enjoyed an hereditary nobility, by no other right, than that their*
 “ *lands, feudal or not feudal, remained in their families.*”

P. 142.

On these passages it may be necessary to make some observations. It is undoubtedly true that in England, as well as other countries, the hereditary possession of *noble fiefs* gave nobility to families: but, I apprehend, the reason of this distinction was, an obligation annexed to those lands, namely, *that the possessors of them were to fight for their country, at their own charges, and to administer justice to the people.* For to these
 honourable

honourable functions the idea of nobility might justly be attached; but not to the meer possession of hereditary lands. Fiefs were divided into *noble* and *non noble*. A meer *socage tenure*, though hereditary, could not give nobility. Justice was administered to the people by all the possessors of *noble fiefs*, in the king's court, in the county and hundred courts, or in the court baron. Some hereditary offices, such as shrievalties of particular counties, to which judicature was annexed, gave nobility to the families of those who held them; and so, I presume, did all offices held by the tenure of *grand serjeanty* in the king's court, or about his person. Many of these were neither military nor judicial: but they ennobled the possessors by a dignity derived from their relation to the crown and person of the king.

P. 214. *Robert earl of Mortagne, on whom he bestowed the earldom of Cornwall, had, in that and other counties, seven hundred and thirty three manors.*

L. i. c. 1. p. 3. Mr. Madox observes, in his *Baronia*, "that there were in England
 " certain honours, which were often called by Norman, or other foreign
 " names, that is to say, sometimes by the English, and sometimes by
 " the foreign name. For example, *William de Forz, Deforce, or de*
 " *Fortibus*, was lord of the honour of Albemarle in Normandy. He
 " was also lord of two honours in England; to wit, the honour of
 " Skipton in Craven. These honours in England were sometimes cal-
 " led by the Norman name, the honour of Albemarle, or the honour of
 " the earl of Albemarle." I have quoted this passage to account to the
 reader for some such titles which occur in this history.

P. 215. *for by the accounts in the Exchequer we find, that much less was taken by King Henry the Second for the farms of other earldoms escheated to the crown.*

R. de Glenville, who fermed of King Henry the Second the great earldom of Richmond, was charged no more than four hundred and thirty three pounds seventeen shillings and three pence, for the manors of which the honour, or barony, was composed, and for the *third penny* of Gippeswiz (the county court) and the service of the *Drenges*, a species of tenants belonging to the manors. (See Madox, Baron. l. i. p. 72. Magn. Rot. 4. 2. Rot. 5. 6.)

P. 215, 216. *But the Saxon earldoms were not hereditary: for, though they were sometimes permitted to descend from father to son, it was not*

not by any right, or claim of inheritance, but only by the indulgence and favour of the king.

Even so late, as in the reign of Edward the Confessor, we find, that, upon the death of Siward earl of Northumberland, because his son Walthoeff was then an infant, that earldom was given to Tosti, the son of Earl Godwin; and, on the death of Godwin, Algar, the son of Leofric earl of Chester, was invested with that earldom.

P. 216, 217. *"The form of girding them with a sword, when they were invested with their earldoms, was likewise strongly expressive of a military commission appertaining to the office and dignity of an earl."*

An old Historian, cited by Mr. Selden, says, that when Sir Andrew Harcloy, earl of Carlisle in the reign of Edward the Second, was degraded for treason, *"the sword which the king him gave, to keep and defend his land therewith, when he made him earl of Cardoill, was broke over his head."* This shews how long the opinion continued, that the defence of the county was committed to the earl with the sword he received at his investiture. The earl of Chester Hugh Lupus had that county from William the Conqueror given to him and his heirs, *"Adeo liberam ad gladium, sicut ipse rex totam tenebat Angliam ad coronam suam,"* as Mr. Selden cites the words from an old author (Titles of Honour, Part II. c. v. sect. 38.)

P. 220. *It is a most remarkable thing, that all the charters now extant for the creation of earls (the most ancient of which were granted by Matilda) make no mention of any determined number of knights which the earls were bound to provide.*

Of these the first in date is the charter of creation to Geoffry de Magnavilla for the earldom of Essex, which was in these words: *"Ego Matildis, filia Regis Henrici, et Anglorum domina, do et concedo Gaufrido de Magnavilla pro servitio suo, et hæredibus suis post eum hæreditabiliter, ut sit Comes de Essexiâ, et habeat tertium denarium Vicecomitatûs de Placitis, sicut comes habere debet in comitatu suo: &c."* The rest relates to *other grants* which the empress made to the earl. Mr. Rymer, by mistake, has published in his *Fœdera* another charter of Matilda, creating Milo Fitzwalter earl of Hereford, as the most ancient now extant. It runs in these words: *"Sciatis me fecisse Milonem de Glocestriâ Comitem de Hereford, et dedisse ei motam Hereford, cum toto castello, in feodo et hæreditate sibi et hæredibus suis ad tenendum de me et hæredibus meis. Dedi etiam ei tertium denarium redditûs burgi"*

“burgi Hereford quicquid unquam reddat, et tertium denarium placitorum totius comitatûs Hereford.”

The charter of Henry the Second to William de Albiney earl of Arundel is so particular as to be worth inserting here. The words are these: “Henricus rex Angliæ, et dux Normanniæ, et comes Andegaviæ, archiepiscopis, episcopis, &c. salutem. Sciatis me dedisse Willielmo Comiti *Arundel* castellum de *Arundel*, cum toto honore *Arundelli*, et cum omnibus pertinentiis suis, tenendum sibi et hæredibus suis, de me et hæredibus meis, in feodo et hæreditate, et tertium denarium de placitis de *Suthsex*, unde Comes est.” This was not a charter of creation to an earldom, like that before recited: for William de Albiney is styled in it *earl of Arundel*: but it gives or confirms to him the castle of Arundel with the honour (or barony) thereunto belonging, and all its other appertenances, *together with the third penny of the county of Sussex*, which is said to be *his earldom*, though his title is taken from the castle. Note, that in this record the castle appears to be an appendix to the earldom, not the earldom to the castle.

See Selden's
Titles of Honour,
Part II.
c. v. sect. 10.

Mr. Selden observes, that this lord was sometimes styled earl of *Sussex*, and sometimes of *Chichester*, which denoted the same person. Yet he was more usually called earl of Arundel, the reason of which I have given in another note to this book.

Ibid. and as other baronies differed in the number of knights fees by which they were held, so likewise did these.

For instance, it appears by records, that, during King Henry the Second's reign, the barony of the earl of Cornwall comprised two hundred and fifteen knights fees, and a third part of a fee; that of the earl of Norfolk one hundred and twenty five fees; and that of the earl of Warwick one hundred and two fees and a fraction.

P. 220, 221. *We find in some charters, that the magistrates, or chief citizens, of London, York, Warwick, and other principal cities, were honoured with that title.*

Spelm. Gloss.
BARONES DE
LONDON.

In King Henry the First's charter to the city of London it is said, “Ecclesiæ et barones et cives teneant et habeant bene et in pace focnas suas cum omnibus consuetudinibus, &c.” “In which” (says Sir H. Spelman) “I understand *barones* pro civibus præstantioribus qui focnas suas et consuetudines, id est, curias habent et privilegia, eorum instar qui in comitatu *barones comitatûs* dicuntur, et *liberi tenentes*, quique de re feudali cognoscebant in civitate, ut alii illi barones in comitatu.”

"mitatu." He mentions also another charter, viz. that of H. III. de libertatibus London, which says, *Barones civitatis London eligant sibi singulis annis de se ipsis majorem.* And a writ of H. I. addrest, *Fulchero filio Walteri, et Eustachio vicecomiti suo, et omnibus baronibus de London.* After which, he says, "Sic barones de Eboraco, de Cestriâ, de War-wicâ, de Feversham, et plurium villarum regiis privilegiis infignium &c."

Matthew Paris, speaking in general of the Londoners, says, "Londonienses, quos, propter civitatis dignitatem, et civium antiquitatem, *barones* consuevimus appellare." Yet I hardly think the inferior citizens could ever be called barons, but only the magistrates, or those in whom the power of the city resided. In the poll tax of the first year of King Richard the Second, each of the *aldermen* of London was rated *as a baron*; the mayor of London as an earl; and all other mayors of great towns in England, each *as a baron*. See the Parliamentary Hist. vol. i. p. 369.

P. 223. *Madox says, he (the constable) was a high officer both in war and peace, and observes that the word signifies a captain or commander.*

The author of the Dialogue de Scaccario uses a strange expression in describing this officer at the Exchequer. He says, that next to the chancellor sat "*miles gregarius, quem contestabularium dicimus.*" It is amazing that he should call so high an officer *a common soldier*, especially as he tells us in the same place, that the constable had the precedence of the king's chamberlains and his mareschall, "*post tunc duo camerarii, &c.*" "*post hos miles, qui vulgo dicitur marescallus;*" and (in another part of his book) that he could not easily be drawn from the king to attend the lesser affairs of his office at the Exchequer, because of greater and more urgent business; "*quia contestabularius a rege non facile potest avelli propter majora et magis urgentia:*" (V. Dial. de Scaccario in fine Madox Hist. of the Excheq. l. i. p. 8 and 10.) Sir William Dugdale takes notice that he is styled in some records *princeps militie domus regie.*

P. 226. *In it's first sense it signified master of the horse to the king.*

There were also inferior mareschalls in the king's stables and employed in the care of his hawks, &c. over all whom the great mareschall presided; and therefore his office was called in a charter of King John *magistratus mariscalcie.* See Madox's Baronia, l. i. c. 6. p. 115, 116.

P. 230. *In the reign of Henry the Sixth John Baker held certain land in Kent of the king, by the service of holding the king's head in the ship,*
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which carried him in his passage between Dover and Whitsand. This was adjudged to be grand-serjeanty; &c.

Madox mentions a record of the reign of Edward the Second, by which it appears that Thomas de Warblynton held the manor of Shirefeld in Hampshire of the king in chief, by the serjeanty of being *marescall of the whores in the king's household, and of dismembring malefactors condemned, and of measuring the galons and bushels in the king's household.* But he very improperly places this tenure among the *grand-serjeanties*, which the record does not warrant. The words are: "*Per serjentiam essendi marescallus de meretricibus in hospitio regis, et dismembrare malefactores adjudicatos, et mensurare galones et bussellos in hospitio regis.*" Certainly Sir H. Spelman would not have called this *the highest and most illustrious feudal service*, as he describes *grand-serjeanty*. It was a *petty serjeanty* of the meanest and most dishonourable nature. The record traces it up as high as to the reign of King Henry the Second.

P. 237. *and other examples occur of the same power being exercised, for several ages, by private persons in England, without the authority of a royal commission.*

Titles of Honour, part ii.
c. v. sect. 33.

I do not mean that it was so exercised for several ages *after the times of which I write*, but in those times, and before. Mr. Selden says, "the persons that gave this dignity *anciently* were sometimes subjects (and these gave it without any superiour authority granted to them) as well as sovereigns. Though *long since* it hath grown to be clear, none gives it with us but the sovereign, or some other by his command or commission." It appears that the liberty of receiving it from a subject, uncommissioned by the king, was sooner taken from the king's immediate tenants in chief, than from others. Mr. Selden mentions a writ of the twenty ninth of Henry the Third, in which those of the second kind (that is, such as held military fees of subjects) were to be distrained, *quod tunc sint ibi parati ad recipiendum arma de quibuscunque voluerint.* In which form the writs went to all the subjects of England. He likewise cites writs of summons or *distringas* from the close rolls of the forty fourth of Henry the Third, of the sixth of Edward the First, and of the sixth of Edward the Second, in which a distinction is made, that some were to come and receive knighthood from the king; and others, *being not tenants to the king*, should be summoned or distrained *ad se milites faciendos*, or, *ad arma suscipienda.*

Ibid.

Ibid. Nay, our kings themselves have been knighted by the hands of their subjects, as Henry the Sixth by the duke of Bedford's, and Edward the Sixth by the duke of Somerset's.

In France, the great restorer and patron of chivalry, Francis the First, chose to receive the order of knighthood from his subject, Monsieur Bayard, illustrious only by his valour and a conduct without reproach. Mr. Selden quotes a passage from M. Paris, in which it is said, that, in the year 1252, Alexander the Third, king of Scotland, having been knighted by Henry the Third, king of England, the Earl Mareschall demanded the king of Scotland's horse and accoutrements, as a fee due to him by ancient custom: but that prince answered, that he conceived no such fee could be due to the Earl Mareschall from him, *because, at his own pleasure, he might have received his knighthood, either from any other catholick prince, or from any of his own nobles.* Mr. Selden by nobles understands gentlemen, and I, believe, very rightly.

Titles of Honour, part ii. c. v. sect. 34.

P. 238. *The poet Gunther, who was contemporary with Henry the Second, says, in a Latin poem, that the Emperour Frederick Barbarossa, the better to repel the enemy from his borders, and defend his country by the superior force of his arms, granted knighthood to many persons of low and vulgar birth, which in France would have been thought a stain to that dignity.*

By some old laws of France, if any man, who was not a gentleman by his father (though he was so by his mother) had been made a knight, his lord might degrade him by cutting off his spurs on a dunghill. Du Cange asserts, that it was necessary for a person, who aspired to the order of knighthood, to prove, that not only his father and mother, but his grandfather and grandmother, were nobly born: which Father Daniel confirms, but observes that in France and other countries, this rule in time was relaxed, and that the French kings dispensed with it on many occasions.

See Selden's Titles of Honour, part ii. c. iii. sect. 24.

V. Du Cange Dissertat. x. sur l'Histoire de St. Louis.

V. Hist. de la Milice Francoise, t. i. l. iii. c. 4.

Ibid. And in the nineteenth year of the same king (Henry the Third) all the sheriffs of England were commanded to make proclamation in their respective counties, that all who held of the king in chief one knight's-fee or more, and were not yet knighted, should take arms and get themselves knighted before the next Christmas, as they loved the tenements, or fees, which they held of the king."

It seems that this injunction was afterwards thought too hard on the poorer knights. For it was declared by act of parliament in the first

year of King Edward the Second, "that none should be forced to take
 "upon them the order and arms of a knight who had not twenty pounds
 "yearly in fee, or for term of life; or before they came to the age of
 "one and twenty years. And such as had holden their lands but a small
 "time, or alledged great age or default of their members, or any other
 "incurable disease, or charge of their children, or suits, or any other
 "such necessary excuses, were only to pay a reasonable fine." But it
 must be observed, that this act does not confine the obligation of re-
 ceiving knighthood to tenants in chief of the crown. Breton, who wrote
 about the time of Edward the First, says, that a lord could not legally
 compel his tenant to give him the aid due by tenure for making his son
 a knight, if he was not a knight himself.

See Breton c.
 des prises des
 avoires.
 Selden's Titles
 of Honour,
 part ii. c. v.
 sect. 36.

P. 238, 239. *Whether, in the times that I write of, any compulsion was
 used to oblige men to be knighted I cannot positively affirm: but, as Mr.
 Madox, in his History of the Exchequer, has given no records of any fines
 having been levied on that account, or proclamations issued to injoin it,
 till the reign of Henry the Third, and many in and after that reign, the
 presumption is strong, that it had not been the practice before the death of
 King John.*

See his Britan-
 nia, States and
 Degrees of
 England.

Camden dates this compulsion from the reign of Henry the Third,
 and observes, that from that time *it seemed a title of burthen rather than of
 honour.* Indeed we may reckon a practice, so contrary to the spirit and
 policy of knighthood, among the bad methods made use of, by the ra-
 pacious ministers of that king, to draw money from the subject.

P. 240. *Every knight had his lady, to whom he vowed faithful service, whose
 favours he wore in tournaments and in battles, and for whose honour he
 was always prepared to combat, with no less zeal and enthusiasm, than for
 the defence of the catholick religion itself.*

Even in the reign of Queen Elizabeth, a challenge was sent by the earl
 of Essex, to the count de Brancas Villars, who was governour of Rouen,
 then besieged by king Henry the Fourth of France and his English con-
 federates under the command of that earl, in which he offered to main-
 tain, among other points, *that he had a more beautiful mistress than Villars.*
 It must however be observed, that, in doing this, he shewed himself, not
 only a good knight, but a good courtier: for he knew the queen would
 think, that *she* was the *mistress* of whose beauty he proposed to be the
 champion. This, and some other similar passages of that reign, shew us
 the reason why Spenser, who was a man of good sense, as well as a fine
 poet,

poet, thought he could not make his court more agreeably to his sovereign, who loved the notions of romantick gallantry and honour, than by representing her, in his *Fairy Queen*, as the patroness of the most sublime chivalry, and as sending forth the moral virtues, illustrated under the characters of different knights, to free the world from vice and oppression, and to merit her favour by heroick actions. In this light the *Fairy Queen* is as much a state poem, as the *Æneis* of Virgil.

P. 243, 244. *The ransoms paid to knights for the prisoners they took, and the share assigned to them, by custom, of all the booty and spoils that were gained from an enemy, furnished them with ample means of advancing their fortunes: but they had moreover rich presents made to them by the princes or nobles they served, upon the performance of any eminent feats of valour.*

After the battle of Poitiers the English said, that they would not set so high a price upon a knight or gentleman, but that he might still be able to live according to his rank, and to follow the wars in an equipage agreeable to his quality. This is mentioned by Froissard as an act of generous courtesy. Mr. Selden says, that, by the law of arms, those captives whose ransom came to above 10,000 crowns, belonged to the king. Barnes tells us, after Froissard, that by their victory at Poitiers all the prince's men were enriched, as well by ransoming, as by the spoil they found there, consisting of gold, silver, plate, and jewels, besides horses, armour, and what they found about the dead. At the end of the action the prince embraced the Lord Audley, and said to him, *Sir James, both I myself and all others acknowledge you, in the business of this day, to have been the best doer in arms. Wherefore, with intent to furnish you the better to pursue the wars, I retain you for ever to be my knight, with five hundred marks yearly revenues, which I shall assign you out of my inheritance in England.* Five hundred marks *per annum* in those days was a very noble estate. But the generous knight, though much pleased with the honour of the gift, divided it all among his four esquires, who had served him well in the battle. When the prince knew this, he confirmed the grant to them, and settled on him a further pension of *six hundred marks*, which was confirmed to him by the king for the term of his life, and for a twelve-month after, to be received out of the coynage of the stannaries in Cornwall, and the prince's lands in that county. Many more instances might be given, to shew the profits that knights might gain by their chivalry, when these institutions were in force. The trade of war seems at present

sent to be more gainful to the general, but much less to the officers, or private soldiers of an army, than it was in those days.

P. 245. *Indeed it never quite sunk, till the spirit of chivalry began to grow out of fashion, and was even rendered the object of ridicule.*

The fear of this consequence made the duke d'Alva say, *that Don Quixote would ruin Spain*; though, in truth, the ridicule of that ingenious book is not pointed against the spirit of chivalry, but against the absurd representation of it in the Spanish romances.

P. 246. *I will add, that the two last, who appear to have fashioned themselves upon the same model, and to have possessed in perfection all the virtues of their order, were, in France, the Chevalier Bayard, and, in England, Sir Philip Sidney.*

In valour, courtesy, generosity, and a high and noble sense of honour, the peculiar virtues of chivalry, these two knights may be well compared together; but Sir Philip Sidney's character, upon the whole, is much superior to Bayard's, because he not only excelled in wit and learning, but was also endowed with great talents and abilities for state affairs, as we know from the testimony of the greatest statesman of that age, William prince of Orange, who sent this message to Queen Elizabeth by Sir Fulk Greville, *that (in his judgement) her majesty had one of the ripest and greatest counsellours of state in Sir Philip Sidney that then lived in Europe, to the trial of which he was pleased to leave his own credit engaged, until her majesty might please to employ this gentleman either amongst her friends or enemies.*

See Sir F. Greville, Lord Brook's Life of Sir P. Sidney, c. ii. p. 31.

P. 34.

The *credit* of the prince of Orange wants no support; but I will add, from the same author, Sir Fulk Greville, the testimony of the earl of Leicester, who said to Sir Fulk, *that when he undertook the government of the Low-countries he carried his nephew (Sir Philip Sidney) over, with him, as one amongst the rest; not only despising his youth for a counsellour, but withall bearing a hand over him as a forward young man. Notwithstanding, in short time he saw this sun so risen above his horizon, that both he and all his stars were glad to fetch light from him. And in the end acknowledged, that he held up the honour of his casual authority by him whilst he lived, and found reason to withdraw himself from that burthen after his death.* But lest this praise might be suspected, as coming from a relation, Sir Fulk says further: *"In what extraordinary estimation his worth was, even amongst enemies, will appear by his death; when Mendoza, a secretary of many treasons against*

C. iii. p. 3.

“ us, acknowledged openly, that, howsoever he was glad King Philip,
 “ his master, had lost in a private gentleman a dangerous enemy to his state ;
 “ yet he could not but lament to see Christendom deprived of so rare a light in
 “ these cloudy times, and bewail poor Widow England (so he termed her)
 “ that, having been many years in breeding one eminent spirit, was in a
 “ moment bereaved of him by the hands of a villain” (or low common
 soldier ; for that is the meaning of the word villain in this place).

We may therefore conclude, that, in the faculties of his mind, Sir Philip Sidney rose above the highest pitch of knightly accomplishments, and was not only *un Chevalier sans peur et sans reproche*, but fit for the greatest offices of state and government. It seems indeed no less dishonourable to the memory of Queen Elizabeth, that she should have let such a spirit and such talents as his remain so long unemployed, than that she should have trusted so much of her most arduous business to her unworthy favourite the earl of Leicester ! As for the Chevalier Bayard, he does not appear to have had any extraordinary parts, or to have been rankt among the *statesmen* of the times in which he lived : nor had he any superior degree of knowledge, to distinguish him much from the ignorant nobility of his country : whereas Sir Philip had acquired such a reputation for science and taste in the fine arts, that (to use the words of the abovementioned author) “ *the universities abroad and at home accounted*
 “ *him a general Mæcenæ of learning ; dedicated their books to him, and com-*
 “ *municated every invention or improvement of knowledge with him. There*
 “ *was not a cunning painter, a skilful engineer, an excellent musician, or any*
 “ *other artificer of extraordinary fame, that made not himself known to this*
 “ *famous spirit and found him his true friend without hire, and the common*
 “ *rendevous of worth in his time.*” Since I wrote this, the publick has been entertained with the life of a very extraordinary man, the Lord Herbert of Cherburg, written by himself, from which he appears to have been as strongly possessed with the high spirit of chivalry as Sir Philip Sidney, and was also a man of parts and learning. But he seems to have had weaknesses and defects in his character, arising chiefly from vanity, which are not to be found in Sidney, none of whose actions were improper, and much less were they ridiculous. Yet it must be owned, if these gentlemen are compared as *writers*, that Lord Herbert’s History of King Henry the Eighth is superior upon the whole to any work of Sir Philip Sidney.

P. 247. *Whether, in the times of which I write, we had any knights bannerets is not very clear. The name does not occur in our histories or records before the reign of Edward the First.*

Mr.

History of the
Exchequer,
p. 614. note
1.

Mr. Madox has cited a roll of the twenty fifth year of that king, in which they are mentioned, together with *knights bachilers*, which latter denomination was relative to the former, signifying knights of an inferior rank to the bannerets. But *milites vexilliferi* are mentioned by Matthew Paris before that time, and one can hardly doubt that these words are a Latin translation of knights bannerets. Father Daniel says, in his Treatise on the Militia of France, that he can find no mention of them in any historian before the reign of Philip Augustus. But he observes, that the writers of that time do not speak of them as a novelty; and therefore he supposes, that this institution commenced when the regulations for tournaments and other matters of chivalry were made in France. We probably received it from thence: but under what reign is uncertain. Mr. Camden erred much in supposing it so late as Edward the Third's. (See his Account of Degrees of States in England, prefixed to his Britannia.)

Ibid. In reality this was not a new order of knighthood, but only a higher rank, conferred by the sovereign, or by the general of a royal army, on some of that order, who were richer than others, and were followed into the field by a greater number of vassals.

Titles of Honour, part ii.
c. v.

See Madox's
Baronia,
p. 160.

V. Britannia,
p. 171. old
edition.

It appears by a record, which Selden has cited on this subject, that in Edward the Second's reign the pay of a banneret was four shillings a day, the pay of each of the knights, who served under his banner, two shillings, and of each esquire one shilling. In the great roll of the sixteenth of Edward the Third, the same sums are allowed by the king to a banneret, for his own pay, and for that of three knights and thirty-six men at arms. Camden cites a charter of the same king, by which he advanced Sir John Coupland to the state of a banneret, because, in a battle fought at Durham, he had taken prisoner the king of Scotland, and it runs in these words: "Being willing to reward the said John, who took David de Bruce prisoner, and frankly delivered him unto us, for the deserts of his honest and valiant service, in such sort as others may take example by this precedent to do us faithful service in time to come; we have promoted the said John to the state and degree of a banneret: and for the maintenance of the same state we have granted for us and our heirs to the same John five hundred pounds by the year, to be received for him and his heirs, &c."

Here we see that the means of maintaining the dignity was a grant from the crown made after the promotion: but generally the knight so promoted was qualified with a sufficient estate before his advancement.

Mr.

Mr. Selden quotes an ancient book, to shew, that, in France, it was required that a banneret should have a sufficient estate to maintain fifty gentlemen to accompany his banner. (Titles of Honour, part ii. c. iii. sect. 23.) But another, which he also cites, informs us, that, in Burgundy, it was enough if he was attended with twenty five. From the grant having been made to Coupland *and his heirs*, and from the mention of *inheritance* in the speech of Sir John Chandos to the *Black Prince*, which I have recited in this book, one should think that the dignity of banneret was hereditary: but Mr. Selden affirms it never was so in England. The difficulty may perhaps be solved in this manner. The honour of knighthood was personal, and never descended to the heir of a knight without a new creation: but when the heir of a banneret was made a knight, he was entitled to the state and degree of a banneret by right of inheritance. Thus it appears by a writ, that, under Richard the Second, Thomas Camoys was a banneret, *as many of his ancestors had been before him*; and for that reason he was discharged from being knight of the shire for the county of Surrey. “Rex Vicecomiti Surriæ salutem: “Quia, ut accepimus, tu Thomam Camoys Chivaler, qui bannerettus est, “*sicut quamplures antecessorum suorum extiterint*, ad essendum unum militum venientium ad proximum parlamentum nostrum pro communitate comitatus prædicti, de assensu ejusdem comitatus, elegisti; nos advertentes quod hujusmodi banneretti, ante hæc tempora, ratione aliqujus parlamenti eligi minimè consueverunt, ipsum de officio militis, ad dictum parlamentum pro communitate comitatûs prædicti venturi, exonerari volumus.” But there is much obscurity in this matter. For Mr. Selden shews, that this Thomas Camoys was a baron and a peer of that parliament, and that many of his ancestors had likewise been peers. (Titles of Honour, part ii. c. v. sect. 25.) It is therefore equally strange that he should have been elected knight of the shire, or discharged from that service as a *banneret*, and not as a baron. Mr. Selden indeed observes, that the name of *banneret* is given to some temporal barons, as if in them it were equivalent and synonymous to *baron*. In the first of Richard the Second divers earls and barons are mentioned by name in the parliament roll, “*et plusieurs autres seigneurs barons et bannerets etans au dit parlement assemblez*.” But this was after the introduction of barons by writ. The same learned writer shews, that in France the form of making bannerets was by cutting off the point or end of the *pennon* or streamer, and so altering the shape of it into a square banner. But it does not appear that this ceremony was used in making Sr. John Chandos a banneret, as is related in this book,

Titles of Honour, c. v.

Ibidem, c. iii. sect. 23.

V. Hist. de la
Milice Fran-
çoise, l. iii.
c. v. t. i.

P. 247. Father Daniel says, that in France the eldest sons of bannerets, before they were knighted, were of inferior rank to knights bachilers, and served under their pay, being called *Esquires Bannerets*: but when they had received the order of knighthood with the usual ceremonies, they had a right of advancing their banners after the death of their fathers, and so the dignity of banneret may be said to have been patrimonial and feudal.

P. 248. *This alternative was, I presume, the real motive, that induced them to be guilty of such a glaring absurdity, as to inflict these penances upon soldiers, for killing or striking their enemies in the persecution of a war, which they themselves admitted to be lawful; &c.*

V Spelman's
Councils, v. ii.
Can. i.
Ibidem, c. ix.

In one of the subsequent canons three years penance is enjoined by the mercy of the bishops, to the Normans who fought at Hastings, instead of one year for every man they knew they had slain in that battle, and forty days for every man they knew they had struck. "Sed qui in *publico bello* pugnaverunt, pro *miserericordia* tres annos pœnitentiae eis episcopi statuerunt." *Publico bello* here signifies the war against Harold, and particularly the battle of Hastings, which in one of the former canons is called *magno prælio*; and mentioned in another by these words, *excepto hoc prælio ante regis consecrationem*. The sixth Canon, of which notice is taken a little lower in the page here referred to, runs in the following words: "Qui autem tantum præmio adducti pugnaverunt, cognoscant se tanquam pro *homicidio* pœnitere debere." I have followed the learned Mr. Johnson in translating *homicidium* murder, because it is generally so used by the writers of that age.

P. 251, 252. *Yet in Domesday-book they are distinguished from other free tenants, called there liberi homines, by not having the power, which these enjoyed, of giving away, or selling, their estates, without leave of their lords. It seems that these liberi homines were a remainder of the alodial tenants of the Saxon folkland, that is, land of the vulgar, opposed to bocland, or thaneland. A certain number of them was necessary to constitute a manor; and therefore, when that number was incomplete, some who held in villenage were enfranchised, to make it up; as appears by the testimony of the record abovementioned. We also find there, that some who were in possession of this alodial freedom thought it more eligible to seek a defence and protection, by recommending themselves to the patronage of some feudal lord, or even of two lords, if the situation of their lands made it necessary for them to have two protectors. The services which*
were

were performed by them to the lord of the manor, in their alodial state, were predial and rustick. A certain number of free socmen, as well as of these, appears to have been necessary to every lord of a manor, for holding the pleas of the manor court, &c.

I will give some proofs of all these several assertions. In the lesser Domesday-book frequent mention is made of the *liberi homines* in these terms: "*Iste liber homo fuit; suus homo fuit; potuit vertere se quo voluit; potuit terram suam vendere vel dare, potuit recedere sine licentia domini.*" All these expressions denote an alodial tenure; the feudal tenants being more closely bound to their lords, and not having such liberty.

In the manor of Simpling in Norfolk it is said, "*Quatuor liberi homines liberati fuere ad hoc manerium perficiendum.*" Before these men were *liberati*, enfranchised, they must have been in vilenage, slaves, or bondmen.

In the lesser Domesday-book mention is made of *liberi homines commendati*, *dimidii commendati*, and even *dimidii subcommendati*. The nature of this *commendatio* is thus explained: "*Liber homo hanc terram tenebat, et quo vellet abire valebat: summisit se in manu Walteri de Dowai, pro defensione sui.*"

It appears by the Survey, that in Gloucestershire there were *liberi homines* in the time of Edward the Confessor called *Radechenisters*, and that they ploughed, harrowed, and sowed the demesne lands for their lords.

That a certain number of free socmen, as well as of these, were necessary to a manor, may be proved from this passage in the survey, "*Tres istorum socmannorum accommodavit Riotus Roger Comiti, propter placita sua tenenda.*" I need not observe, that none but freemen could hold pleas.

P. 253. In Domesday-book, that great record of the ancient state of this kingdom, a distinction is made between villeins, who were affixed to a manor, and others of still a lower and more servile condition, distinguished by the names of *bordarii*, *cotarii*, and *servi*; &c.

In a note to one of the laws of William the Conqueror, transcribed in the Appendix to the first volume of this History, I have observed, that sometimes the word *villanus* signifies not a slave, but a farmer, inhabiting a village, which is the first sense of the word, and in which it must be taken, where persons called by that name seem to be equalled with *burgesses*. But, in Glanville and other law books, *villanus* or *villein* was a man *regardant* to a manor, so as to go along with it whenever it changed its master, and in such absolute servitude, that his person, children, and goods belonged to his master. Indeed Judge Lyttelton says, "that if a man is seized of a manor, to which a villein is regardant,"

See Domesday-book, f. 18.

Tit. Glouc. Bercheley et Derhurst.

Spelman's Gloss. RADECHENISTER.

See Appendix to the first volume, p. 529, 530. N. 111. De relevio villani.

See also the Saxon laws.

See the Statute of Merton.

Glanville, l. 5.

Coke's Instit. vol. i. l. ii.

c. 11.

“and granteth the same villein by his deed to another, then he is a
“villein *in gross*, and not *regardant*.” But this alteration of the name
made none in his state, with respect either to the liberty of his person
and family, or the property of his goods.

P. 254, 255. *Yet in other places he gives the appellation of bondmen to all
below the degree of ceorls or free socmen.*

See his treatise
on Feuds and
Tenures, c. v.

This learned author (Sir H. Spelman) describes the *ceorles* “as
“husbandmen, who lived upon the *outlands* of the Saxon *thanes*, and
“were customary tenants at the will of their lords, rendering unto them
“a certain portion of victuals, and things necessary for hospitality. This
“rent, or retribution, they called *feorme*, from whence we derive the
“name of farm and farmers. *But this service was no bondage.* For the
“*ceorl*, or husbandman, might as well leave his land at his will, as the
“lord might put him from it at his will; and therefore it was provided,
“by the laws of Ina, in what manner he should leave the land, when
“he departed from it to another place. And the writ of waste in Fitf-
“herbert seemeth to shew, that they might depart, if they were not well
“used.”

These *ceorls* have been often confounded with slaves and bondmen;
under an inaccurate use of the word *villani*, and so have other free inha-
bitants of *villages* in those days. The *free socmen* were of an order supe-
rior to these; and many of them, in the times of which I write, pos-
sessed *hereditary* estates of a strict feudal nature, which therefore they
could not leave *at pleasure*, without the consent of their lords; but which
they could not be put out of, without a legal forfeiture. The account
given of the *ceorles*, in the passages above-cited, seems to agree with what
is said in Domesday-book of the *liberi homines*, or *alodial* tenants, at the
time when that record was compiled. But some of these may have been
of a higher rank and degree, according to the extent of the lands or farms
they possessed. L. iv. p. 209. Bracton takes notice of a species of tenure in the de-
mesne lands of the king called *villein socage*. Those who held by this
tenure were *glebæ ascriptitii*, affixed to the land, and performed *villein*
services, but *certain and determined*. Their privilege was, that, while
they would and could perform these services, they could not be turned
out. Nor could they be compelled against their will to hold such tene-
ments: for which reason they were called *free*. Yet they could not dis-
pose of their tenements, nor transfer them to others by way of gift, no
more than *mere villeins*; but, if they removed, they delivered up their
tenements to their lord, or his bailiff, who gave them to others to be held
in

in villenage. Bracton distinguishes these *villein socmen*, from those who held of the king in *free socage*; and from some whom he calls *adventitii*, who held by *covenant* in the same manner as *villein socmen*, but had not the same privilege.

P. 254, 255. *Nay, we are told by Glanville, that, in his time, if a freeman married a woman born in villenage, and who actually lived in that state, he lost thereby the benefit of the law (that is, all the legal rights of a freeman) and was considered as a villein by birth, during the life-time of his wife, on account of her villenage.*

Bracton says, that a child begotten by a freeman, whether in marriage L. i. p. 5. or not, upon a woman born in villenage, and living in that condition, was born a slave: but, if the woman was out of the power of her lord, though born in servitude, and was married to a freeman, the issue of that free bed would be free. This explains what is said more indistinctly by Glanville.

I dwell on these circumstances as they make a very curious part of the history of those times, and (God be thanked) are little known at present to my countrymen.

P. 255. *But he says, that no villein could acquire his freedom with his own money: for, notwithstanding his purchase, he might, according to the law and customs of the kingdom, be brought back into villenage: because all the goods of a villein born belonged to his lord; &c.*

Sir Thomas Lyttelton says, "that no land holden in villenage or L. ii. c. 11. sect. 172. villein land, nor any custom arising out of the land, shall ever make a freeman villein; but a villein may make free land to be villein land to his lord. And where a villein purchaseth land in fee simple, or in fee tail, the lord of the villein may enter into the land, and oust the villein and his heirs for ever. And after, the lord, if he will, may let the same land to the villein to hold in villenage." I would observe, that neither here, nor in any other part of this author's book relating to villenage, is any distinction made by him between *villeins*, and *servi nativi*, or *bondmen*; but he uses the former word as comprehending all those, whose persons, children, and goods, were the property of their lords, whether they held lands or no; which shews that in his time the legal sense of the term *villein* was the same as in Glanville's, and that the servitude of those who were in that state continued unaltered, though he speaks of it as a *tenure* when lands were held by the villein; and mentions also *villein service*, "as to carry or recarry the dung of his
" lord

“ lord out of the city, or out of his lord’s manor unto the land of his
 “ lord, and to spread the same upon the land, and such like.” Bracton
 L. iv. p. 190. also speaks of slaves who *held in villenage* of their lord, and uses the
 192. Latin words *villanus* and *servus* as synonymous terms. He likewise puts
 Ibidem. a case, of a lord giving his slave land to be held *by free service*, without
 having enfranchised him; and says, “ that such a gift or grant does not
 “ alter the servile state of the tenant, because a tenure in villenage does
 “ not take away any liberty from a free person, nor does a freehold con-
 “ fer liberty upon a villein. But if, without *manumission*, a lord gives a
 “ freehold to be held by the slave *and his heirs*, it might be presumed
 “ that he meant to enfranchise him; because a slave could have no heirs
 “ without being enfranchised.”

P. 258. *but yet, as in Lyttelton’s Tenures, which were written during the
 reign of King Edward the Fourth, there is a whole book concerning the
 state of persons in servitude, it is evident that many such were still re-
 maining in those days.*

See Parlia-
 mentary Hist.
 p. 386, 387.
 vol. i.

Many slaves were enfranchised in consequence of the rebellion headed
 by Wat Tyler and Jack Straw, in the fourth year of the reign of King
 Richard the Second. But the next year the king complained to his par-
 liament, that he had been forced to grant charters of liberty and manu-
 mission, under the great seal of England, to the rebels, who were only
 bond-tenants and villeins of the realm: which knowing to be done
 against law, he desired them to seek remedy, and provide for the con-
 firmation or revocation thereof. Whereupon the lords and commons
 unanimously resolved, *that all grants of liberties and manumission, to the
 said villeins and bond-tenants, obtained by force, were in disherison of them,
 the lords and commons, and destruction of the realm; and therefore to be
 null and made void by authority of parliament.* Nevertheless it is pro-
 bable, that the apprehensions of such another insurrection had no small
 effect to incline the lords of manors, both to treat their slaves better, and
 to lessen the number of them, from this time forwards. But the pro-
 gress of this disposition was gradual and slow, as all such changes must
 be.

P. 274. *If we look to the best accounts of the original customs of the ancient
 German nations, we shall find, that, in their communities, all the free-
 holders enjoyed an equal right with the nobles, to assist in deliberations on
 affairs of great moment.*

Tacitus

Tacitus says, that in Germany (under which name, in his time, were comprehended all those countries from whence the Saxons and Angli originally came) “*de minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum apud plebem arbitrium est, apud principes pertractentur.*” By the word *plebem* here used, we must understand *the inferior orders of freemen*: for the same author says, that even the *liberti* were of no account in their commonwealth. “*Liberti non multum supra servos sunt, raro aliquod momentum in domo, nunquam in civitate*” &c. And the sense of the word here is further explained by a passage in Cæsar’s Commentaries concerning the Germans. He says, “*Neque quisquam agri modum certum, aut fines proprios habet; sed magistratus ac principes, in annos singulos, gentibus, cognationibusque hominum qui unâ coierunt, quantum eis et quo loco visum est, attribuunt agri, at anno post alio transire cogant, cujus rei multas afferunt causas*” &c. one of which is, “*ut animi æquitate plebem contineat, quum suas quisque opes cum potentissimis æquari videat.*” In this place it is evident, that *plebem* signifies those who had a share in the annual distribution of lands, and consequently were freemen, but of the inferior orders. And that *all those*, by the German customs, concurred with the nobles in consulting upon and determining affairs of great moment, appears undeniably from the passage of Tacitus above-cited.

V. Cluver
German. Antiq.
l. i. p. 94.
c. 11.
Sheringham,
p. 77.

Tacitus
de moribus
Germ. c. 25.

P. 257. *We are assured, by a record which Dr. Brady has cited, that, so late as in the fifteenth year of King John, not only the greater barons, but all the inferior tenants in chief of the crown, had a right to be summoned to parliament by particular writs.*

The words are these: “*Rex Baronibus, militibus et omnibus fidelibus totius Angliæ salutem &c. Unicuique vestrum, si fieri potest, literas nostras super hæc transmissimus; sed ut negotium illud, quod et nobis et vobis ad commodum cedat et honorem, cum majori expediretur festinatione, has literas,*” &c.

V. Rot. Pat.
15. Johan.
p. 2. m. 2.

Mr. Selden has given us, in his Titles of Honour, another writ of summons sent the same year, viz. the fifteenth of King John. The words of it are: “*Rex Vicecomiti Oxon. salut. Præcipimus tibi quod omnes milites ballivæ tuæ, qui summoniti fuerunt esse apud Oxoniam ad nos a die omnium sanctorum in xv dies, venire facias cum armis suis, corpora vero baronum sine armis singulariter; et iv discretos milites de comitatu tuo illuc venire facias ad nos ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri. Teste meipso apud Wilton xi die Novembris.*”

See Seldon’s
Titles of Honour,
last edition,
part ii.
p. 738.

Eodem modo scribitur omnes vicecomitibus.

Mr. Selden calls this a *strange writ of summons*, and says, that, for ought he has seen, *it is without example*. So strange indeed it is, that I am unable to understand what it means. If the *quatuor discreti milites*, whom the sheriff was to send out of every county, were representatives of each county, or knights of the shire, what were the other *milites qui summoniti fuerunt esse apud Oxoniam &c?* If these latter knights were, as Mr. Selden seems to suppose, the inferior tenants in chief, who, by the clause in King John's Magna Charta, are distinguished from the greater barons, and are to have only a general summons to parliament, what were the four whom the sheriff was required to send out of every county, *ad loquendum nobiscum de negotiis regni nostri?* There is no notice taken, that they were to be chosen *de legalioribus et discretioribus militibus singulorum comitatum*, as in the summons of the forty ninth of Henry the Third, nor who were to chuse them; but it rather seems to have been left to the sheriff himself. Neither does it appear, why the other *milites qui summoniti fuerunt* were ordered to come with their arms, and the barons unarmed, nor who these barons were. If they were the king's barons, the *barones majores*, they ought to have been summoned by letters from the king, and not by the sheriff. The whole is so obscure, that I can draw no inference from it, except that there was at that time an irregularity and arbitrary variation in the summons to parliament, which might be owing to the confused and unsettled state of the kingdom.

Two years afterwards, a method of summons for tenants in chief of the king, with a distinction between his greater barons, and other vassals of a degree inferior to those, was settled by one of the clauses in King John's Magna Charta, which I shall transcribe from the manuscripts of the greatest authority, viz. those which Dr. Blackstone has followed in his edition. “Et ad habendum commune consilium regni de auxilio
“affidendo, aliter quam in tribus casibus prædictis, vel de scutagio af-
“fidendo, *summoneri faciemus archiepiscopos, episcopos, abbates, comites, et*
“*majores barones sigillatim per literas nostras: et præterea faciemus sum-*
“*moneri in generali per vicecomites et ballivos nostros omnes illos qui de nobis*
“*tenent in capite ad certum diem, scilicet ad terminum quadraginta*
“*dierum ad minus, et ad certum locum; et in omnibus literis illius*
“*summonitionis causam summonitionis exprimemus: et sic factâ sum-*
“*monitione negotium ad diem assignatum procedat secundum consilium*
“*illorum qui præsentés fuerint, etsi non omnes summoniti venerint.*”

The

The words *faciemus summoneri in generali, per vicecomites et ballivos nostros, omnes illos qui de nobis tenent in capite*, do not express an *election* or *representation*, but only direct that the summons to these should be *general by the sheriffs or bailiffs of the king in each county*; whereas the others were to be summoned *by particular writs*. In the first writ cited here, of the fifteenth of King John, the summons was general, as well to the greater barons, as to the king's inferior tenants in chief; but it is declared in the writ itself, that this was done against the proper form, and only for more expedition: "*Ut negotium illud, quod et nobis et vobis ad commodum cedat et honorem, cum majori expediretur festinatione.*" This clause of King John's charter re-establishes and confirms the ancient method with relation to the greater barons, but admits of the general summons with relation to all others who held *in capite* of the crown. There is in it no intimation, that they were to be represented by knights of the shire, as Spelman and others suppose; nay, the last words thereof seem rather inconsistent with any kind of representation, "*et sic factâ summonitione, negotium ad diem assignatum procedat secundum consilium illorum qui præsentés fuerint, etsi non omnes summoniti venerint.*" This was proper to be declared in the case of a general summons to a large number of persons, because there the non-attendance of many among them might well be apprehended: but had they been required to appear by representatives from every county, such a declaration would not have been necessary, nor could it have been prudently made.

The term of forty days which is assigned in the clause for their coming to parliament after their summons, and the promise there given, that the cause of their summons should be expressed in the writs, I suppose were agreeable to the usage of the kingdom in cases of the same nature, that is, in the summons to all the greater barons, to the knights of the shires, and to the representatives of cities and boroughs. But it must be observed, that, in all the ancient copies of the several charters of King Henry the Third, this clause is left out. I have seen an accurate transcript of that which he granted in the first year of his reign, taken from the archives of the church of Durham; and there I find the reason why this and some other clauses of King John's Magna Charta were omitted therein. The words are these: "*Quia vero quædam capitula in priore cartâ continebantur, quæ gravia et dubitabilia videbantur, scilicet de scutagiis et auxiliis assidendis, de debitis Judæorum, et aliorum, et de libertate exeundi de regno nostro vel redeundi in regnum, et de forestis et forestariis, warrennis et warden-*

“nariis, et de consuetudinibus comitatum, et de ripariis et eorum custodibus, placuit supradictis praelatis et magnatibus ea esse in respectu quousque plenius consilium habuerimus, et tunc faciemus plenissime tam de hiis *quam de aliis quæ occurrerint emendanda*, quæ ad communem omnium utilitatem pertinuerint et pacem et statum nostrum et regni nostri.” (For the ease of the reader I give this clause without the abbreviations in the old writing). The difficulty therefore concerning the assessment of scutage and aids, about which there was a doubt, and which the king’s ministers might think an encroachment upon his prerogative, occasioned this clause to be left out, together with some others. In the subsequent charters of King Henry the Third, provision is made, *that scutage shall be taken as it was in the time of King Henry the Second*: “Scutagium de cætero capiatur, *sicut capi solebat tempore regis Henrici avi nostri*.” And there is a general saving to all persons of the liberties and free customs they had before enjoyed. “Et salvæ sint archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, templariis, hospitalariis, et omnibus aliis, tam ecclesiasticis quam sæcularibus personis, *libertates et liberæ consuetudines quas prius habuerunt*.” This was a medium between an express declaration (such as had been inserted into King John’s Magna Charta) of the right of the subject to have no aids nor scutage taken without consent of parliament, and a denial of that right on the part of the crown. But the clause in King John’s charter concerning the method of summons to parliament was entirely dropt in all the subsequent charters, both of King Henry the Third and King Edward the First. Sir H. Spelman assigns it as a reason for this omission, that this whole branch of King John’s Magna Charta was not comprized in the articles between him and his barons, whereupon that charter was grounded, but gained from him afterwards. Yet, as I see no cause why King Henry the Third, or his son, should have been unwilling to agree to this method of summons, which was much more easy and convenient to them than the former, I rather ascribe it to a dissatisfaction in some of the inferior tenants in chief, who might think it an injurious diminution of their privileges, not to be summoned as the greater barons were, and as these had usually been, by particular writs. This might probably induce the crown to recur to the old method of summons; till the expedient of representing them by knights of the shires, in the same manner as other freeholders in the several counties had before been represented, and thus exempting them from the obligation of attending in person, was agreed to and settled, about the middle, or towards the latter end of the reign of King Henry the Third,

according

V. Spelman
of Parliaments, p. 65.

according to the best lights I can obtain in this matter. Yet all the inferior tenants in chief of the king were not comprehended in that representation: for we find by the close rolls, that, in the thirty fourth year of Edward the First, the tenants *in antient demesne* came to parliament, and acted therein distinctly from the knights of the shire. It likewise appears by a record, that, in the fifth year of King Edward the Second, they were exempted from contributing to the wages of such knights. (V. Cotton's Abridgement of the Records in the Tower, p. 1.)

V. Rot. Claus.
34 Edw. I. m.
15. dorf. in
cedulâ.
& Brady of
Boroughs,
p. 37.
& Tyrrel's
Appendix to
Hist. of Eng-
land, p. 174.
175, 176.

I cannot quit this subject without observing, that, although in the above-mentioned clause of King John's charter mention is made of the *greater barons*, who were to be summoned to parliament by particular writs, yet the other tenants of the king, who were to be summoned generally, are not there called *lesser barons*; nor do I find *that title* ever given to the *inferior tenants in chief of the king*, in any charter or record. But there are some very antient, which give the name of *barons* to the principal tenants *under the king's barons*. For instance, the barons of Robert Fitz-haimon earl of Gloucester are mentioned in a charter of King Henry the First to the abbey of Abington. "*Sicut designatum fuit per barones ipsius Roberti.*" And Henry de Novoburgo earl of Warwick gave certain lands in that county to the same abbey *in the presence of his barons* (says the grant); one of which *barons*, viz. Thurstan de Montfort, is recorded to have held ten knights-fees under the grandson of that earl.

V. Monasti-
con, tom. i.
p. 106.
Hody's Hist.
of Convocat.
p. 289.
V. Dugdale,
Warwick-
shire, f. 303.
Hody, ut su-
pra.

In one of the laws of the Norman kings of Sicily are these words: "*Post mortem baronis vel militis, qui à comite vel barone alio baroniam aliquam vel feudum tenuerit.*"

Bracton likewise thus describes the vavassors, or great subvassals: L. i. c. 8. "*Sunt et alii, qui dicuntur vavassores, viri magnæ dignitatis:*" and he ranks them next to the king's barons. These had therefore a better right to the title of *lesser barons* than those who held of the king *in capite* by socage, or by fee-farm, or by a single knight's-fee, or half a knight's-fee; as many did among those who by the above-cited clause in the charter of King John were to have only *a general summons to parliament*. Nor was there any impropriety in such persons representing *the community of the county*, in which they were some of the principal gentlemen, having *curiam de suis hominibus*, courts of their own, as lords of manors, which to this day are called *court barons*.

It is said in an antient manuscript, cited by Camden, that King Henry the Third, "*post magnas perturbationes et enormes vexationes, inter ipsum regem, Simonem de Monteforti, et alios barones motas et sopitas, statuit et ordinavit, quod omnes illi comites et barones regni Angliæ, quibus*

V. Camden's
Britannia.
Selden's Titles
of Honour,
sect. 21.
p. 740.

“ *ipse rex dignatus est brevia summonitionis dirigere, venirent ad parliamentum suum, et non alii, nisi forte dominus rex alia similia brevia eis dirigere voluisset.*”

Upon this I would observe, that here is no mention of *lesser barons*, who might be called to parliament by the king's writs; but the sense of the passage is, that, at the end of the troubles between Henry the Third and his barons, (viz. after the battle of Evesham) he acquired a power, by act of parliament, to call to his parliaments *such earls and barons of the realm*, as he should vouchsafe to send writs to, *exclusively of all others*, who were not to come, *unless he afterwards should send to them the like writs*. Which power was exercised by some of his successors in the persons of the most ancient and greatest barons of the realm. For instance, William de Vesci, the brother and heir of John de Vesci, who had been summoned in the forty ninth of Henry the Third, *inter majores barones*, was not summoned till the twenty third of Edward the First, though he was forty years old at John's decease; and, from that year till the sixth of Edward the Second, was never summoned again. Many other instances of the like nature occur in looking over the lists of summons to parliament. And some who had been summoned were totally omitted, and came no more to parliament. This was certainly a very great and extraordinary change of the ancient constitution, which supposed that the right of advising the king in his great council was inherent in his barons, and not to be taken from them without forfeiture of their baronies. Nothing indeed could have induced them to consent to such a law, but the great disorder into which the whole state had been thrown by a long civil war, in the end of which Henry the Third and his son Prince Edward were victorious, and able to do what they pleased. It is very surprising, that in times, when the strength of the peerage was less awed by that of the crown, the established feudal notions should not have prevailed to the abolition of this law. I must however observe, that with relation to *earls* the power never was exercised; it not appearing that any of these were at any time omitted. And as for those, who, without having any baronies in them, were called to parliament by writs from the crown, the learned author of the *Inquiry into the manner of creating Peers*, has said much to prove, that such writs *gave them no peerage*. He observes, “ that, “ from the forty ninth of Henry the Third to the twenty third of “ Edward the Fourth (from which times the summons have been more “ regular) not fewer than ninety eight laymen have been summoned to “ parliament at one single time, by the very same writs by which the earls “ and

“and other undoubted barons were summoned, and yet neither themselves, nor any of their name or posterity, were ever afterwards summoned to any parliament or great council.” From whence, and from the silence of the house of lords and of the heirs of these several persons, with regard to this omission, and from there being no words in their writs that express any creation of a peerage or barony, he takes it for granted, that they could only be summoned as *assistants* to the house of lords, and as *de consilio regis in parlamento*. This hypothesis would undoubtedly solve many difficulties in this dark part of the History of our ancient Constitution, if it could be fully made out. But, in the case of the greater barons, the separating from their peerages the right of voting in parliament, and subjecting it to the arbitrary will of the king, whether it was done by an act of parliament (as the words *statuit et ordinavit*, in the words cited by Camden, seem to imply) or by a mere extension of prerogative, was an innovation very hurtful to the dignity of the peers and to the balance of the government. Some have doubted the authority of the manuscript cited by Camden; and I should give no credit to it, if it were not confirmed by the indisputable practice of all our kings from Edward the First to Richard the Third. It must however be noted, that such omissions in many cases, though not in all, may be well accounted for, from the frequent and necessary absence of many of the peers on the king’s service abroad, while the crown had great dominions and almost perpetual wars on the continent. On such occasions the omitting to summon them to parliament was no encroachment on their rights, but a proper exemption from a duty they could not perform. It may also have been done not improperly, according to the notions of those times, when the lands that constituted a barony were seized by the crown for any fault or defect of service, during the life of the baron, or for any number of years: whereas an arbitrary omission of summoning those to parliament, who were willing and able to do their duty there, if it did not extinguish the peerage, deprived it of one of its most valuable privileges; and, if it did extinguish it, rendered the highest property of the kingdom quite precarious and dependent on the will of the crown. But this belongs not to my subject; no such thing having been thought of in the times of Henry the Second, or ever before. What I meant to consider here was only the notion, that *the lesser barons*, or the *barones secundæ dignitatis*, were not *the great subvassals* who held manors under earls or other eminent nobles, but *the inferior tenants in capite of the crown*; a notion espoused by some writers of no small authority, and on which

which more than one hypothesis has been founded, with no warrant from antiquity, so far as I can discover.

P. 277. *A writ of summons directed to the sheriffs of Bedfordshire and Buckinghamshire, and requiring two knights to be sent for each of those counties, is extant in the close roll of the thirty eighth year of Henry the Third.*

The words of the writ are these: "Tibi districte præcipimus, quod
 " præter omnes prædictos venire facias coram concilio nostro apud Westm.
 " in quindenâ Paschæ prox. fut. 4 legales et discretos milites de comitatibus
 " prædictis, quos idem comitatus ad hoc elegerint, vice omnium et singulo-
 " rum eorundem; viz. 2 de uno comitatu, et 2 de alio, ad providendum una
 " cum militibus aliorum comitatum, quos ad eundem diem vocari fecimus,
 " quale auxilium nobis in tantâ necessitate impendere voluerint. Et tu
 " militibus et aliis de comitatu prædicto necessitatem nostram, et tam
 " urgens negotium nostrum diligenter exponas, et ad competens auxi-
 " lium nobis ad præsens impendendum efficaciter inducas. Ita quod
 " præfati 4 milites præfato concilio nostro ad prædictum terminum
 " Paschæ respondere possint super prædicto auxilio *pro singulis comitatibus*
 " prædictorum" &c. Dr. Brady supposes that this was not a summons
 to a general council; but Dr. Hody calls it a parliament, and I think with
 good reason. For M. Paris says, *congregati sunt iterum Angliæ magnates*
Londini. The word *iterum* refers to the preceding council, held the
 same year, sexto Calend. Februarii, which the same author calls *parlia-*
mentum. But in reality this point is not worth disputing. For if, at
 this time, the knights of the shires were summoned to the *lesser councils*,
 they certainly were to the *greater*. It is observed by Dr. Brady, that
 the date of the writ was soon after the breaking up of a general council.
 And so it well might, because that general council had denied the king
 aid, and therefore it was necessary to summon another as soon as pos-
 sible. He also objects, that there are two other parts of this writ, the
 last of which is a command to the sheriff to levy all debts that were due
 to the king, &c. *A clause not to be found in parliament-writs*. But this,
 at most, proves only what I shall not dispute, that the form of these writs
 was not then so precisely determined, as not to admit of occasional vari-
 ations. Nor does the coupling of other things with a summons to par-
 liament make it no summons.

See Brady's
 Introduction
 to his History,
 vol. i. from
 p. 212 to 215.
 See Hody,
 p. 341.
 V. M. Paris,
 sub ann. 1254.
 p. 595. & ad-
 ditam. p. 123.
 P. 592. ibi-
 dem.
 See also Hody,
 p. 338.

Ibid. *And there is a clause in the great charter of the ninth of the same king, whereby it is declared, that, together with the spiritual and temporal lords,*

lords, other inferior freeholders, et omnes de regno, by which words I understand the whole commonalty of the realm, granted to the king the fifteenth part of all their moveable goods, in return for the liberties accorded to them in that charter.

The words in the original are these: "Pro hac autem concessione et donatione libertatum istarum et aliarum libertatum contentarum in cartâ nostrâ de libertatibus Forestæ, archiepiscopi, episcopi, abbates, priores, comites, barones, *militēs, libere tenentes*, ET OMNES DE REGNO NOSTRO dederunt nobis quintamdecimam partem omnium mobilium suorum." The words *militēs, libere tenentes, et omnes de regno nostro dederunt nobis* &c. coming after *barones* &c. seem to declare very plainly, that the whole commonalty of the kingdom had concurred with the nobility in granting this tax to the king, as a return for the charter. Dr. Brady, to elude the force of the proof against his hypothesis, is obliged to contend, that *dederunt* in this place signifies *paid*, and not *granted*. But Dr. Hody observes rightly, that this conjecture appears to be false, from this consideration, *that the charters were drawn up in the parliament itself, wherein the subsidy was granted, and sealed long before the money could be paid.* He adds, "it cannot be supposed that *omnes de regno* were present in that parliament, so as to grant the subsidy in their own persons; but they did it either *per se* or *by their representatives.*" How these words were understood by Henry de Knighton, who wrote his History little more than a century afterwards, will appear from this passage, in his account of the reign of Henry the Third: "Post hæc Rex Henricus concessit *magnatibus terræ* duas chartas, unam de Forestâ, et aliam de libertatibus, propter quam causam *communes regni* concesserunt quintam decimam partem omnium bonorum suorum mobilium et immobilium." The two last words are a mistake, being not agreeable to the charter: but the words *communes regni* are a clear explanation of the *omnes de regno* in the charter. As for the expression *rex concessit magnatibus terræ duas chartas*, it must not be understood as excluding the commons out of that grant; for the contrary appears by the charter itself: but *magnatibus* is here a general term that comprehends the whole parliament; as it certainly does in many other passages of our ancient historians. And we have in the Cotton library a manuscript chronicle of Walter de Coventry, who lived and wrote under the reign of Henry the Third, which, in giving an account of this parliament, says, "Ibidem concessa est D. regi a comitibus, et baronibus, et clero et populo, quinta decima omnium bonorum." But what will better determine the true sense of this clause, is the following passage in a record of

See Hody's
Hist. of Con-
voc. p. 303.

See Tyrrel's
App. p. 21.
vol. v.

See Petit,
Rights of the
Comm. App.
p. 164.
Hody, Hist.
of Convoc.
p. 335, 336.

of the thirty seventh of that king: "Noverint universi, quod D. H.
" rex Angliæ illustris, R. Comes Norff. et Mareschallus Angliæ, H.
" Comes Hereford et Essex. J. Comes de Warwico, P. de Sabaudiâ,
" *cæterique magnates Angliæ* consenserunt in sententiam excommuni-
" cationis generaliter latam apud West. tertio decimo die Maii ann.
" regni regis prædicti 37, in formâ scil. quod vinculo præfatæ sententiæ
" ligentur omnes venientes contra libertates contentas in cartis commu-
" nium libertatum Angliæ, et de Forestâ &c. Sciendum autem quod si
" in scriptis super eadem sententia a quibuscunque confectis, seu con-
" ficiendis, aliud vel aliter oppositum vel adjectum fuerit, aut articuli ali-
" qui alii in eis contenti inveniantur, D. rex, *et prædicti magnates omnes,*
" *et communitas populi*, protestantur publice in præsentia venerabilium
" patrum B. Dei gratia Cant. arch. totius Angliæ primatis, nec non et
" episcoporum omnium in eodem *colloquio* existentium, quod in ea num-
" quam consenserunt nec consentiunt, sed de plano eis contradicunt."

V. Rot. pat.
37 H. III.
m. 12. dorso.

This *colloquium* is called, by Matthew of Westminster, *magnum parli-
mentum*. And surely the *communitas populi* being thus named in addition
to, and distinct from, the *magnates omnes*, is a very strong evidence, ad-
ded to the others beforementioned, that the commons were present, and
acted together with the nobles in this parliament, two years before the
time assigned by Brady for their first coming to those assemblies. That
difference indeed would be small, if it did not affect the whole founda-
tion upon which his hypothesis stands, viz. *that this Innovation was the
consequence of Simon de Montfort's victory at the battle of Lewis, and the
captivity of the king.*

Ibid. Nor can I discover, in the history of those times, any reason sufficient
to render it probable, that so great an alteration should then have been
made in the constitution of England.

It by no means appears, that, under the government of King Henry
the Third, either the feudal powers of the nobility over the commons were
more relaxed than they had been during the reigns of Henry the Second
or Henry the First; or that the condition of citizens and burgeses had
been mended by any encrease of trade and commerce, or that the free-
holders in the counties had been raised any higher, by an augmentation of
wealth, or extension of privileges, which could open the way to such a
change. Nor was trade or commerce esteemed *more honourable* in the
age of Henry the Third than in that of his grandfather, or during the
government of the Saxons. On the contrary, the disposition and temper
of the times, as well as the genius of the government, were more unfavourable

vourable to trade in the Norman times than the Saxon; and the state of England, during the period from the death of Henry the Second till that of Henry the Third, was more turbulent, more distempered, and more unfriendly to the encrease of the national industry, or any enlargement of our commerce, than under the moderate and prudent administrations of the two former Henries.

P. 279. *We know indeed that some boroughs, which, from their poverty, were unable to bear the expence of sending members to parliament, declined the use of that privilege.*

There are some instances of boroughs that petitioned to be restored to the use of that privilege after a very long interruption. Thus, in the reign of James the First, Agmondesham, Wendover, and Great Marlow alledged, by petition to the house of commons, that the interruption in their sending burgessees, *for four hundred years past*, was not owing to their own neglect, but to the fault of the sheriffs; or, if it was owing in any measure to the burghs themselves, *it was because their predecessors were poor and unable to maintain their members*; whereas now they were content to undergo that charge.

See Brown
Willis, vol. i.
p. 149.

On this I would observe, that, as they had not complained before, in so long a period of time, it is probable, that it was not *the neglect of the sheriffs*, but *their poverty and inability to bear the charge of sending members to parliament*, which had occasioned so long an interruption of their right. Their petition was allowed, by the commons and the king, as it appeared that they were parliament burghs *by prescription*, not by charter.

Ibid. *Among the close rolls of the twenty fourth year of that king, there is a writ of summons to parliament, in which it is asserted, not as an innovation introduced by the earl of Leicester, but a maxim grounded on a most equitable law, established by the foresight and wisdom of sacred princes, that what concerned all should be done with the approbation of all; and that dangers to the whole community should be obviated by remedies provided by the whole community.*

The words are these: "*Sicut lex justissima, provida circumspectione sacrorum principum stabilita, hortatur, ut quod omnes tangit ab omnibus approbetur, sic et innuit evidenter, ut communibus periculis per remedia provisiva communiter obvietur.*" If the earl of Leicester had been the first who applied this maxim to the constitution of English parliaments or great councils, it would have been impossible for Edward the First to

Rot. Claus.
24 Edw. I.
m. dorso.

have grounded it on a law *providā circumspeetione sacrorum principum stabilita*. Nor could he have used that expression, if he himself, or his father, had introduced the practice of summoning the commons to those assemblies.

Ibid. Some very eminent writers have supposed, that none but the king's inferior tenants in chief were at first represented by the knights of the shires: but there is no sufficient evidence to support that opinion.

See Spelman
of Parlia-
ments, p. 64.

Sir H. Spelman and other writers have dated the original of knights of the shires from one of the clauses in King John's Magna Charta, which directs that the inferior tenants in chief of the crown should be summoned to parliament *in general*. But that those words do not import any *representation*, I have endeavoured to shew in a former note to this book: nor does it appear by other evidence, either of records or of history, that, in consequence of that clause, *such tenants in chief* were at any time the sole electors of knights of the shires, or that only *such tenants in chief* could be elected. Sir H. Spelman indeed adds "that other
" freeholders, because they could not always be distinguished from
" them that held *in capite* (which encreased daily) grew by little and
" little to have voices in the election of the knights of the shires, and to
" be at last confirmed therein by the statute 7 Hen. IV. and 8 Hen. VI." But how does he shew that there ever was a time, when knights of the shires were elected by the *tenants in capite*, without the voices of other freeholders? He supposes the point which should be proved. For, that under the reigns of King John and of Henry the Third, when he thinks that such elections began to be made, other freeholders came to the county-court is most certain.

See Keble's
Statutes, 7
Hen. IV.
c. 15.

If we consider the statute of the seventh of Henry the Fourth, which is the oldest in our books that regulates or directs the form of county elections, we shall find it was made (as the preamble declares) *at the grievous complaint of the commons in parliament of the undue election of the knights of counties for the parliament, which be sometimes made of affection of sheriffs, and otherwise, against the form of the writs directed to the sheriff, to the great slander of the counties, and hindrance of the business of the commonalty in the said counties, &c.* All the regulations laid down in it appear designed to prevent abuses arising from the partiality of the sheriffs, or other undue influence used in elections; not to make or to confirm any change in the qualifications or rights of the electors. The enacting part of it says, "Our sovereign Lord the King, *willing therein to*
" *provide remedy*, by the assent of the lords spiritual and temporal, and
" *the*

“ the commons in this present parliament assembled, hath ordained and
 “ established, that from henceforth the elections of such knights shall be
 “ made in the form as followeth: (that is to say) at the next county to
 “ be holden after the delivery of the writ of the parliament, *procla-*
 “ *mation shall be made in the full county of the day and place of the parlia-*
 “ *ment, and that all they that be there present, as well suitors duly sum-*
 “ *moned for the same cause, as others, shall attend to the election of the*
 “ *knights for the parliament, and then in the full county they shall pro-*
 “ *ceed to the election freely and indifferently, notwithstanding any request*
 “ *or commandment to the contrary,*” &c. What follows concerns only the
 return of the writ, and neither in the part above-recited, nor in any sub-
 sequent clause, is there a word that denotes any intention in the legisla-
 ture to encrease the number of electors of knights of the shires, in pre-
 judice to the right of the king’s tenants in chief, or that gives the least
 intimation of any such right having been ever in those tenants, exclusive of
 others, who were suitors to the county-court and present therein. All
 the freeholders were so from the earliest times: and that the substance of
 this law was no more than *an affirmance of an old right and custom*, ap-
 pears from the preamble of a subsequent act made in the eleventh of the
 same king, which says, that “ whereas in the parliament holden at West-
 “ minster, the seventh year of the reign of our said Lord the king, there
 “ was ordained and established by a statute *for the preservation of the*
 “ *liberties and franchises of the election of the knights of the shire used*
 “ *through the realm*, a certain form and manner of the election of such
 “ knights, as in the said statute more fully is contained,” &c. There
 can be nothing more different than *the preservation of liberties and*
franchises used through the realm in elections, from the communi-
 cating of a liberty and franchise to persons not entitled to it before.
 The act of the eighth of Henry the Sixth, instead of enlarging, re-
 strains the number of electors. It enacts, that those knights shall be
 chosen in every county *by people dwelling and resident in the same counties,*
whereof every one of them shall have land or tenement, to the value of forty
shillings by the year at the least, above all charges: which is explained in
 a subsequent act, of the tenth of the same king, to mean *freeholds of that*
value within the county for which the election is to be made. And the rea-
 son why this was done is set forth in the preamble: *Whereas the elections*
of knights of shires to come to the parliaments of our Lord the King, in many
counties of the realm of England have now of late been made by very great
outrageous and excessive number of people, dwelling within the same counties
of the realm of England, of the which most part was of people of small sub-
stance

stance and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties, whereby man-slaughter, riots, batteries, and divisions among the gentlemen, and other people of the same counties, shall very likely rise and be, unless convenient and due remedy be provided in this behalf: our Lord the King, considering the premisses, hath provided, ordained, and established by authority of this present parliament, &c.

It is amazing that any person, who had ever read this statute, or that of the seventh of Henry the Fourth, should say, as St. Amand does in his Historical Essay on the Legislative Power of England, p. 187. that *none but the immediate tenants of the crown (the lesser barons) came to the county-court, and none other had votes till, by the 8 H. VI. c. 7. all freeholders of 40 s. per annum had that right given them.* The very reverse of all this appears by the statute he refers to: it gives no right to freeholders of 40 s. per ann. which they had not before; but *excludes all those who had freeholds under that value.* The words, *whereas the elections of knights of shires in many counties of England have now OF LATE been made by very great, outrageous, and excessive numbers of people, and whereof every of them PRETENDED a voice equivalent with the most worthy knights and esquires dwelling within the same counties,* shew beyond contradiction, that the intention of the legislature in enacting this statute was not to alter the constitution and usage of the kingdom, with respect to elections for the shires, but to remedy a *recent abuse and innovation*, grounded (as they thought) on unjustifiable pretensions. It seems pretty evident, that the practice of parcelling out land in small portions, and thereby multiplying freeholds inferior in value to what they had usually been in former times, produced this complaint of *very great, outrageous, and excessive numbers of people, who were of small substance and of no value, coming to these elections.* But it is certain, that this law and that of the tenth of the same king were *restrictive*, instead of giving a right of voting to any freeholders who did not before enjoy that franchise.

That *none but the immediate tenants of the crown (the lesser barons) came to the county-court before the eighth of Henry the Sixth* (as the same author asserts), is a most false and unwarranted proposition. I have given, in the Appendix to the first volume of this History, a charter of Henry the First, relating to the manner of holding county courts, in which it is said by that king, “*Et volo et præcipio, ut omnes de comitatu eant ad comitatus et hundreda, sicut fecerint tempore regis Edwardi.*” And in another clause he says, “*Et si modo exurgat placitum de divisione terrarum, si est inter barones meos dominicos, tractetur placitum*” in

“in curiâ meâ: *Et si est inter vavassores duorum dominorum, tractetur in comitatu.*” The vavassors therefore were suitors to the county-court, and all the freeholders of the county, *omnes de comitatu*, were required to go thither, as they had done in the time of Edward the Confessor. Nor does it appear that any alteration was made in this point by any subsequent law. In the above-recited statute of the seventh of Henry the Fourth, *all that are present in the county-court, as well suitors duly summoned for the same cause, as others, are commanded to attend to the election of the knights for the parliament.* And that, before the making of this law, the vavassors, or *mesne tenants*, who did not hold their lands directly of the king, might not only concur in the elections of knights of the shires, but be themselves *elected*, seems evident from the words of Chaucer, in the description of his *Franklin*.

“At sessions was he lord and fire,
 “Full oftimes was he *knight of the shire*;
 “A sheriff had he been and a coronour,
 “Was never such a worthy *vavassour*.”

Yet it must be observed, that, to qualify any person for being elected, the mere possession of a knight's-fee was not sufficient; but it was necessary that he should be *miles gladio cinctus*, that is, knighted according to the forms then in use. By an act of the first of Richard the Second, all who had lands to the value of twenty pounds yearly in fee, or for term of life, were obliged to receive the order of knighthood. And this law seems to have been founded on a more ancient custom. For there are writs of Henry the Third, commanding the sheriffs to summon to the county courts all who held one knight's-fee, or less than a whole knight's-fee, *dum tamen de tenemento suo, tam militari quam socagio, possint sustentari*, that they might be there made knights. There is also an act of 23 Hen. VI. c. 15. which says, “*the knights of the shires shall be notable knights of the same counties for the which they shall be chosen, or otherwise such notable esquires, or gentlemen born, of the same counties, as shall be able to be knights: and no man to be such knight, which standeth in the degree of a yeoman, or under.*”

In this law the ability of being made a knight, that is, the having freeholds sufficient to qualify them for it, is admitted instead of the actual order of knighthood required by the old writs: and yeomen, with all under that degree, are excluded, agreeably, I presume, to ancient usage: but in no statute relating to the knights of the shires is there the least intimation of it's being required that they should be *tenants in capite*

See Cotton's
 Abridgement
 of the records
 in the Tower,
 p. 13.
 Edw. III.
 p. 18, 19.
 V. Rot. Claus.
 24 Hen. III.
 m. 8. dorso. &
 26 Hen. III.
 m. 6.

capite of the king, or of the usage having been altered with regard to that point.

See the records
in the Tower.

The next circumstance I shall consider belonging to this matter is the wages paid to the knights. It must be granted, that, if by virtue of the abovementioned clause in King John's Magna Charta, or by any subsequent statute or custom introduced in the time of Henry the Third or Edward the First, such knights were elected *by tenants in capite of the king, exclusively of all others*, and represented *them alone*, no others could be charged with the payment of their wages. But in one of the parliament rolls of the fifty first year of Edward the Third, n. 45. the commons petition the king, that the said expences be levied *of all the commons of the counties, as well within franchises as without; except the franchises of cities and boroughs, and except those who come to parliament by writs of summons, and their tenants who hold in bondage*. The words in the record, which I have examined, run thus: *Que plaise au roy notre seigneur que soit ordeine a ceste present parlement, que les dites despenses soient levez de toutz les communes des dites comtees, si bien deinz franchises come dehors; forspris de la franchise des citees et burghs, et forspris de ceux qui viegnent icy par brief à parlement, par summonce, et de leurs tenants qui tiegnent en bondage*. Of the preamble to this petition, which is very remarkable, I shall have occasion to take notice in a subsequent note. It will be enough to add here, that the answer of the king is *soit fait come devant a eslé usé en ce cas*. Which was the proper answer, because no exception was made in this petition to tenants *in ancient demesne*, or *in gavelkind*, who appear by other records to have been entitled to an exemption from these expences; and therefore the king would neither wholly reject, nor wholly grant the demand. But it was impossible that the commons could have made it so general, if the right of election for counties had in those days been confined to *tenants in chief of the king*. And it is not pretended by Spelman, or any other writer, that it was extended or enlarged in the reign of any king between Henry the Third and Edward the Third inclusively. It seems to me therefore, that this roll contains a strong evidence against the notion that the electors of knights of the shires were anciently none but the *tenants in capite*, called by some modern authors *lesser barons*.

One of the most striking arguments, used by Dr. Brady to support that notion, is the manner of electing the commissioners for the shires in the kingdom of Scotland, where, by an act made in the year 1427, (the twenty third of James the First) the *small barons* and *free tenants, who held of the crown in capite*, were discharged from coming to parliaments,
and

gleiche Eintheilung unter
Baronen

and allowed to chuse commissioners to serve in their stead. This law was confirmed in the year 1587, by an act of James the Sixth, wherein it is declared, that none shall have votes but such as have forty shillings land in free tenendrie *bolden of the king*. The permitting of the inferior tenants in chief to come to parliament by representatives, instead of a personal attendance, I believe to have been done (as many other things were in Scotland) after the example of England; but the excluding of all *not bolding of the king* from such elections seems to have arisen from a policy, which had before rendered the government and constitution of Scotland very different from our's in many respects. For (whatever conformity there was between them in the times of which I write) it is certain, that, from the reign of Alexander the Third to that of James the First, the aristocratical power in the state of that kingdom had continually encreased, and prevailed over the popular, far more than in England. No just or conclusive inference can therefore be drawn from this circumstance in those laws, to prove by analogy, that no freeholders, but tenants in chief of the crown, had anciently a right to elect the representatives of English counties.

P. 280. *There is not in any of those writs, nor in the oldest we have for sending up representatives from cities or boroughs, the least intimation, that such elections were a novelty then introduced.*

The words of the writ directed to the sheriff of Bedfordshire and Buckinghamshire, in the thirty eighth of Henry the Third, which is the oldest now remaining, have been recited in a former note to this book. The next for knights of the shires, which is of the forty ninth of the same king, runs thus: "Item mandatum est singulis vicecomitibus per Angliam, quod venire faciant duos milites de legalioribus et discretioribus militibus singulorum comitatum ad regem London in Octabis prædictis *in forma supradicta*." The writ, which contains the form here referred to, is lost. To the cities and boroughs we have one in these words: "Item *in forma prædicta* scribitur civibus Ebor. civibus Lincoln. et cæteris burgis Angliæ; quod mittant *in forma prædicta* duos de discretioribus et legalioribus et probioribus tam civibus quam burgenfibus suis." The form here referred to may probably have been that of a writ of summons sent to the city of London, and now lost. For *that* was the most proper to be enrolled as a pattern for all the other writs to the cities and boroughs, *mutatis mutandis*. And it must be observed, that, in this abridgement or minute, York and Lincoln are particularly named, but London is not; which seems an evident proof, that

that the writ directed to that city was kept on the rolls, and therefore it was not thought necessary to enter the others, which were in the same form. The words *et cæteris burgis Angliæ* imply, that the boroughs which sent members to Parliament were well known: but, if none had ever sent any before this time, so general a description of them could not have been given. It appears, that the Cinque Ports were summoned distinct from the others; and the writ to Sandwich only was entered on the rolls with a *similiter mandatum est singulis portibus pro se*. Probably, that to London was in much the same form. The cause of their summons is there declared to be *tam pro negotio liberationis Edwardi primogeniti nostri quam pro aliis communitatem regni nostri tangentibus*. It is directed thus: *Rex baronibus et ballivis portus sui de Sandwico salutem. And the precept is, Vobis mandamus, in fide et dilectione quibus nobis tenemini, firmiter injungentes (ut) omnibus aliis prætermiſſis mittatis ad nos ibidem quatuor de legalioribus et discretioribus portus vestri. Ita quod sint ibid. in Octab. prædictis nobiscum, et cum præfatis magnatibus regni nostri tractatum et super pacemissis consilium impensuri. Et hoc, sicut honorem nostrum et vestrum et communem utilitatem regni nostri diligitis, nullatenus omittatis*. But further we find, that in the writs for the expences of knights of the shires, in the twenty eighth year of Edward the First, which are the first of that reign remaining on the rolls, it is said, that “the county should pay them, *prout alias in casu consimili fieri consuevit*, words which imply a custom.” It must indeed be observed, that the writ of the forty ninth of Henry the Third has not these words. Mr. Tyrrel supposes, that they were left out by the negligence of the clerks: but a better reason may be assigned from the writ itself. For there it is said, that the expences of the knights had been very great, because their attendance had been longer than they had expected; but that the counties having before contributed largely to other public expences for the defence of the kingdom, they should not be charged to this too highly. “Cum nuper vocari fecimus duos de discretioribus militibus singulorum com. &c. ac iidem milites *moram diuturniorem quam credebant traxerint ibidem, propter quod non modicas fecerint expensas; cumque communitates comitatum dictor. varias hoc anno fecerunt præstationes ad defensionem regni nostri &c. per quod aliquantulum se nimium sentiunt gravari, tibi præcipimus quod duobus militibus, qui pro communitate dicti comitatus præfato parlamento interfuerunt, de consilio quatuor legalium militum ejusdem comitatus, rationabiles expensas suas in veniendo ad dictum parliamentum, ibidem morando, et inde ad partes suas redeundo provideri facias, et eas de eadem communitate levare facias, proviso quod ipsa communitas occasione præstationis istius supra modum non gravetur.*” It is very probable therefore, that, as the expences of the knights

V. Rot. Clauf.
28 Edw. I.
m. 12. dorso.
Tyrrel's Appendix to his History, p. 60, 61.
& Bibliothec. Polit. Dial. viii.
V. Rot. Clauf.
49 Hen. III.
m. 10. dorso.
See also Brady's Answer to Petyr, p. 140.

knights of the shire had been greater than usual, and the king was unwilling to load the counties, which had been so much burthened before, with too heavy a charge, the words *prout alias in casu consimili fieri consuevit* were on purpose left out, as no proper rule to proceed by in this case.

Dr. Brady has given us a writ of expences allowed to four knights of each county in the kingdom, for attending upon a parliament in the forty second year of Henry the Third, not as members thereof, but on an extraordinary commission of inquest into all excesses, transgressions, and injuries done and committed by justices, sheriffs, bailiffs, or any other persons within the said counties. No sum is fixed; but they are to have *rationabiles expensas suas in eundo, redeundo, et in præfato parlamento pro dictis negotiis morando*. This is a very extraordinary writ, and, as far as I can discover, the single one of the kind that ever was granted. Yet from hence Dr. Brady supposes, that the words *prout alias in casu consimili fieri consuevit* got into antient writs for the expences of knights, citizens, and burgessees: a strange supposition! it being far more likely, that the form of this writ, sent on a particular occasion, was taken from those, than that this was the precedent upon which they were grounded.

See Brady's Answer to Petyt, p. 141. from the Claus. Rot. 42 H. III. m. 1. dorso.

As for the two clauses in King John's charter concerning the manner of levying aids and scutage, I cannot think they conclude any thing with regard to this matter; the first of them saying only, that no scutage or aid should for the future be imposed, but by the common council of the kingdom; and the other declaring in what manner the greater and lesser tenants in chief of the king should be summoned on such occasions. How does it appear, that the latter was intended, as some have supposed, to enumerate *all the members of parliament, all entitled to sit there*? If there was no dispute at that time about the method of summoning the representatives of counties, cities, and boroughs, there was no need of mentioning any of them in that clause, which is not the description of a parliament or common council of the kingdom, but a declaration in what manner, and by what kind of summons, certain members thereof, viz. those who held of the king, should be called to the parliament, for the imposing of scutage or other aids.

See the Clauses in Blackstone's edition of the charters. Magn. Carta Regis Johan. p. 13. Clause 12. p. 14. Clause 14.

In the roll of the 51 Edw. III. n. 45. part of which I have cited in a former note to this book, I find these words: "Pourceque, *de commune droit du royaume*, de chascun comté d'Engleterre sont et seront eleus deux personnes d'estre à parlement por le commune de dits comtés." Now, if, as this record testifies, two persons were to be elected to

See the records in the Tower of London.

parliament for the commonalty of every county *by the common law of the realm, de commune droit du royaume*, we must look for the beginning of this law, or usage, in much more ancient times than the reign of King Henry the Third, even in the earliest institutions of the Anglo-Saxon government. This expression seems to me of very decisive importance, as to the question before us.

Ibid. But some writs are taken notice of by Mr. Tyrrel, a diligent searcher into records on this subject, which set forth a claim of certain tenants in ancient demesne, before the fifteenth year of Edward the Second, that they ought not to be charged with wages to knights of the shire; forasmuch as they and their ancestors, tenants of the same manor, had, from time beyond memory, been always exempted, by custom, from the expences of knights, sent by the community of their county to the parliaments of the king, and of his royal progenitors.

V. Appendix
to the second
part of his
third volume
of the History
of England,
p. 60, 61.

The words are, as cited by Mr. Tyrrel: "*Quod licet ipsi et eorum antecessores tenentes de eodem manerio de F. (quod est de antiquo dominio coronæ Angliæ) a tempore quo non extat memoria semper hætenus quieti esse consueverunt de expensis militum ad parlamenta nostra, et progenitorum nostrorum, regum Angliæ, pro communitate dicti comitatus venientium,*" &c. Mr. Tyrell gives in English the rest of the writ, which goes on thus: "That whereas the sheriff distrains the said tenants to contribute to the expences of the knights that came to the last parliament, to their great damage, otherwise than had been accustomed in all times past (*omnibus temporibus retroactis fieri consuevit*), therefore the king commands him that he desist from his said distress, and do not compel the said tenants to contribute otherwise *quam omnibus temporibus retroactis*" &c. After which he adds, "Now, though this writ be entered without any king's name, or date, yet it appears at the bottom, that it was issued out by G. L'Escrope then chancellor, and William de Herlston, clerk of the Chancery; and this must have been before the fifteenth year of Edward the Second, because it appears by the close rolls of that year (*Rot. Claus. 15 Edw. II. m. 37. dorf. in scedulâ*), that in December the great seal was delivered to William D'Ayremyn, under the seals of William de Clyffe, and the said William de Herlston, clerks of Chancery, who are often mentioned in our records to have been keepers of it *pro tempore*, till the second year of Edward the Third, when the said William de Herlston had the sole custody thereof committed to him. There are other writs of this kind upon the close rolls, as particularly one directed

"rected to Sir John de Cobham, and four other knights therein named,
 "reciting, "That whereas Simon, archbishop of Canterbury, claims,
 "as well for himself as his predecessors, and their tenants hitherto,
 "a tempore quo non extat memoria, certain lands held in *gavelkind* in the
 "county of Kent, which ought to be free from the expences of knights
 "coming to the parliaments of that king, as well as those of his pro-
 "genitors; and then it concludes with a *superfedeas* to the said sheriff,
 "not to molest the said tenants, until such time as the king be further
 "informed, and that he, by the advice of his council, hath ordained,
 "what is to be done in the premises." From both these writs we may
 "draw these conclusions, first, that there was at the time of the grant-
 "ing these writs a claim by *prescription* time out of mind, allowed for all
 "tenants in antient demesne, as also for those who held of the archbishop
 "in *gavelkind*, to be exempted from contributing to the wages of knights
 "of the shire, or else these petitions and the writs upon them had been to
 "no purpose; for you must note, that all tenants in *antient demesne* and
 "in *gavelkind* were made so before the conquest, and therefore might
 "well plead a *prescription*, and were it not that I should be tedious, I
 "could cite *several other writs of this kind*, as also pleas of certain towns
 "to this purpose, and that not long after the time Dr. Brady supposes the
 "commons were again summoned to parliament."

Claus. 50
 Edw. III.
 par. ii. m. 19.
 dorso.

*Ibid. With regard to cities and boroughs, there are likewise extant two
 claims, made in the reigns of Edward the Second and Edward the Third,
 the proceedings upon which seem decisive of the sense of that age, concern-
 ing the antiquity of the custom of citizens and burghesses coming to parlia-
 ment, and from towns that were held under subjects, not immediately of
 the crown; I mean the claims of the towns of St. Albans and Barnstaple,
 &c.*

The claim of the town of St. Albans, here-mentioned, is transcribed at
 length by Mr. Madox, in his History of the Exchequer, from the parlia-
 ment rolls of the eighth year of King Edward the Second, and it will be
 proper to give a transcript of it here. "Ad petitionem burgenfium villæ
 "de S. Albano, fuggredientium regi, quod licet ipfi teneant villam prædictam
 "de rege in capite, et ipfi, ficut cæteri burgenfes regni, ad parlamenta
 "regis, cum ea fummomiri contigerit, per duos comburgenfes fuos venire
 "debeant, *prout totis retroactis temporibus venire confueverunt*, pro omni-
 "modis fervitiis regi faciendis; quæ quidem fervitia iidem burgenfes et
 "anteceffores fui burgenfes villæ prædictæ, tam tempore domini Edwardi
 "nuper regis Angliæ, patris regis, et progenitorum fuorum, quam tempore
 "regis

V. Madox's
 Hift. of the
 Excheq. c. 17.
 p. 521.

“ regis nunc, semper ante instans parliamentum, ut præmittitur, præsti-
 “ terunt. Nomina quorum burgensium sic pro dictâ villâ ad parliamenta
 “ regis venientium in rotulis cancellariæ semper irrotulata fuerunt.
 “ Nihilominus vicecomes regis comitatûs Hertfordiæ, ad procuracionem
 “ et favorem abbatis de Sancto Albano et ejus consilium, burgeneses præ-
 “ dictos præmunire, seu nomina eorum prout ad ipsum pertinuit, re-
 “ tornare, ut ipsi servitium suum prædictum facere possent penitus re-
 “ cusavit, in contemptum regis et burgensium prædictorum præjudicium,
 “ et exheredationis periculum manifestum, super quo petunt remedium
 “ opportunum. “ R. est per consil.

“ Scrutentur rotuli &c. de canc. si temporibus *progenitorum regis*
 “ burgeneses prædicti solebant venire, vel non; et tunc fiat eis super hoc
 “ justitia, vocatis evocandis si necesse fuerit.”

See Petyt,
 Brady, Tyrrel,
 and others.

V. Brady's
 Answer to Pe-
 tit, p. 38.

A great deal has been said by several learned writers about this re-
 cord; and indeed the matter of it is extremely important, with regard
 to many points in the disputes that have arisen about our ancient
 constitution. Dr. Brady being desirous to elude the force of it against
 the hypothesis which he had laid down (viz. that no burgessees were
 summoned to parliament before the forty ninth of Henry the Third)
 says, *that those of St. Albans, as appears by the words of their petition*
to the council, claimed not, nor prescribed to come to parliaments merely
as from a borough, but as from a town that held in chief of the king; and
this service was incident to their tenure, and was such as the king's pro-
genitors had accepted in lieu of all services due by reason thereof. Now,
 though we should admit all this to be true, it still proves against him,
 that *some burgessees* came to parliament before the forty ninth of Henry
 the Third, viz. *all who held in chief of the king*: for the *progenitors* of
 the father of Edward the Second must at least mean his grandfather and
 great grandfather King John and King Henry the Second: and a long
 usage is implied in the words *prout totis retroactis temporibus venire con-*
sueverunt. Yet it seems to make good another part of his system, viz.
that none but tenants in chief were members of parliament. Let us
 then consider how far that inference from it can be maintained. To
 render it conclusive we must suppose, that, if in fact the burgessees of
 this town were not tenants in chief, they could not have been admitted
 to come to parliament, either at any time before, or soon after this time.

V. Rot. Claus.
 35 Edw. I.
 m. 14. dorso.

But it appears from the close rolls, that expences were allowed to bur-
 gesses of St. Albans for coming to parliament in the thirty fifth year of
 Edward the First, and with the clause *prout alias in casu consimili fieri*
consuevit, which implies an old custom. We find, indeed, by a writ to
 the

the sheriff of Hertfordshire in the fifth year of Edward the Second, that a dispute then arose, whether the town was a borough, or not, and that the abbot and bailiffs were summoned to Chancery upon that question; but it was not determined till the eighth year of that king, in consequence of the petition recited above. And though no other answer appears in that record, than that the rolls should be examined, to see whether the burgessees used to come to parliament in the times of the king's progenitors, it may be concluded, that, upon the examination, judgement was given for them; because there is a writ on the close roll of the eighth year of Edward the Second, for paying wages at the rate of two shillings a day to two burgessees of St. Albans; and another of the same nature on the close roll of the second of Edward the Third. And in the first year of the same reign there are letters patent confirming a certain indenture, between the abbot of St. Albans and the burgessees of that town, wherein there is contained a final agreement of all quarrels and disputes between the said abbot and burgessees; and the abbot does there acknowledge, that the said burgessees, whose names are there particularly set down, might chuse from among themselves two burgessees to go to every parliament; "*Puissent d'eux-memes elire deux burgois d'aler au chacun parlement.*" All these records I have carefully examined myself in the originals at the Tower.

Rot. Claus.
8 Edw. II. m.
13. dorso.
Rot. Claus.
2 Edw. III.
m. 16. dorso.
Pro expens.
burgenfium.
Rot. Pat.
1 Edw. III.
m. 28. p. 2.

It is therefore very evident, that the right of the town of St. Albans to send representatives to parliament, according to their petition, was allowed by the council of King Edward the Second, and by that of his son; nay, by the abbot himself, who had first disputed that privilege. And yet it is certain, that the burgessees *held of the abbot, and not in chief of the king*. We are informed by Mr. Madox, that, in Domesday-book, the town of St. Albans is placed among other towns and lands of the abbey, in these words *terra ecclesie S. Albani*: He further says, "I cannot find by any of the most ancient Revenue-rolls (though I have searched many of them purposely upon this matter) that it was a demesne-town belonging to the king, or rendered to the king (when the *sedes abbatialis* was full) any ferm, aid, tallage, or other duty, as all the rest of the king's towns did, from time to time. A sure token that the townsmen *did not hold it immediately of the king*." What then becomes of Dr. Brady's Hypothesis, *that none but tenants in chief came to parliament*, and that the burgessees of St. Albans might be entitled to that privilege *as tenants in chief*, but could not have enjoyed it upon any other claim? Mr. Madox has shewn, *they were not tenants in chief*; and yet it is proved, by the records above-cited, that their right of coming

See Madox's
Hist. of the
Exchequer,
p. 522. c. 17.

V. Hist. of
the Excheq.
p. 523. c. 17.

coming to parliament was allowed as a privilege, *which they had possessed from time immemorial*. Mr. Madox indeed supposes, "*that the town of St. Albans was granted to the abbey by one of the ancient kings of England: the abbot and convent held the town in capite, or immediately of the king (in burgage) as parcel of the endowment of the abbey, and they held the town or burghesses in demesne, or (if you please) the burghesses were demesne-men of the Abbey.*" But admitting this supposition, which is only a mere conjecture (for he had said before, *that he found no proof in any of the most ancient Revenue-rolls that it was a demesne-town belonging to the king*) it still appears, that, although the abbot held immediately of the king, and might have a right to sit in parliament on that account, as a tenant in chief, yet the town held *of him*, and *not immediately of the king*: the townsmen were *his demesne-men*, not *tenants in chief*, or *demesne-men of the crown*. And therefore this transaction, not only disproves the assertion of Dr. Brady, that none but tenants in chief had a right of sitting in parliament before the forty ninth of Henry the Third, but also shews he is wrong in the account that he gives of the foundation of the right of cities and boroughs to send representatives to that assembly in and after the twenty third of Edward the First, before which time he denies that they ever had been summoned in a regular manner. His words are these: "Having thus proved the time when, and the cause why, citizens, and burghesses, and the tenants of the king's demesnes, were at first summoned to parliament, we shall proceed to discover, what cities and burghs sent their representatives, or citizens and burghesses, upon such summons. The answer to this is very short, *That they were only the dominicæ civitates and burgi regis, the king's demesne cities and burghs, such as had charters from the king, and paid a fee-farm rent in lieu of the customs, and other advantages and royalties that belonged to the crown,*" &c.

Now it plainly appears, that the borough of St. Albans does not answer this description in any respect. *It was not a demesne city or burgh of the king in the twenty third year of Edward the Second. It had no charter from the crown, nor did it pay a fee-farm rent in lieu of the customs, &c. that belonged to the crown.* The Hypothesis of the Doctor is therefore evidently as false with regard to the *right* as to the *time* of citizens and burghesses coming to parliament. And it cannot be supposed, that the burghesses of this town were summoned to parliament without any right, by the favour of the sheriff, after the eighth of Edward the Second; because it appears by the records abovementioned, that their claim had been disputed, and judicially determined: so that here was no room for partiality in the sheriff,

sheriff, as in other cases, where no dispute had arisen. The king's council, before which the cause had been tried, would have refused to admit the return of such burgessees to subsequent parliaments, if their right to be summoned had not been clearly made out: but, if their claim had depended on their being *tenants in chief of the crown*, it is evident, *they could not have had any such right, as they were not such tenants.* It is true, that, in their petition they say, *they held their town in chief of the king*, and speak of their coming to parliament *as a service that was incident to their tenure*: but, though this was a false suggestion, yet their right to come to parliament by ancient usage and prescription, *sicut cæteri burgenſes regni, prout totis retroactis temporibus venire consueverunt*, might be very good. And therefore the answer was, *Scrutentur rotuli &c. de cancellariâ si temporibus progenitorum regis burgenſes prædicti solebant venire, vel non. Et tunc fiat eis super hoc justitia, vocatis evocandis, si necesse fuerit.* This was putting the cause entirely on *prescription*, not on their being proved to be *tenants in chief of the crown*. Domesday-book and the Exchequer records should have been searched, instead of the Chancery rolls, if *that* had been the question. In fact it appears, that they continued to hold immediately of the abbot, not of the crown, and yet came to parliament, with other burgessees, after this time; the abbot himself being obliged to allow their right to that privilege, which in all probability he would not have disputed, if they had not involved it with another unwarrantable pretension, which he could not admit. Mr. Madox says, *he had not yet found, that any town, city, or burgh in England, did in ancient time hold of the king, or of any other lord, upon these terms, viz. to be quit of all prestations and services by sending burgessees to parliament.* He might likewise have added, that no *tenant in capite* held on such terms. And therefore the claim of these burgessees to hold *in capite* of the king by the service of coming to parliament *pro omnimodis servitiis regi faciendis*, was undoubtedly false. Accordingly it was rejected; but yet their right to come to parliament was allowed and established. I would also observe, that their complaint to the council against the sheriff of Hertfordshire, for having refused to return them, though the names of the burgessees sent by them to parliament had always been enrolled in the Chancery rolls, overturns the position advanced by Dr. Brady, and supported by many others, *that it was left to the sheriff of every county to name and direct which were boroughs, which not, by those indefinite and general words in the writ, "de qualibet civitate duos cives, et "de quolibet burgo duos burgenſes &c. eligi facias."* For if sheriffs had really a right to do this, and no rule to proceed by, but their own arbitrary

See History of
the Excheq.
p. 522. note.

See Brady on
Boroughs,
p. 52.

bitrary discretion, the townsmen of St. Albans had no reason to complain, that the sheriff of Hertfordshire had refused to return any burgeses from their town, even though it had been true that they held it of the king. But they speak of his refusal as a grievous offence, *in contemptum regis, et burgensium prædictorum præjudicium, et exheredationis periculum manifestum, super quo petunt remedium opportunum*. Indeed to suppose such a power in that officer is repugnant to reason, and expressly contradicts the words of a statute made in the fifth of Richard the Second, which declare, that if any sheriff shall from thenceforth be negligent in making his returns of writs of the parliament, *or leave out of the said returns any cities or boroughs, which be bound, and of old time were wont to come to the parliament, he shall be punished in the manner as was accustomed to be done in the said case in the said time past*. The sheriffs, in fact, did frequently neglect to return any burgeses for the poorer and meaner boroughs, which could not easily bear the charge of their wages; and this was connived at, when it was done on good reasons: but still it evidently appears by the statute here-cited, *that they had no right to do so*, and that when they ventured to do it *improperly or injuriously*, they had been *often* complained of and punished for it, *before the making of that statute*. They must therefore have had some rule to direct them therein: and as they certainly had no power to create a new borough, so they could not be justified in not making a return from any of those, *which were bound, and of old time were wont to come to the parliament*, unless by loss of trade, or from any other cause, they were so much decayed, as not to be able any longer to support the expence of maintaining their members. In that case alone it might be equitably judged, *that they were not bound to come to parliament propter debilitatem eorum et paupertatem*. And the sheriff might be allowed to determine of *this exemption*, upon his own knowledge, but at his own peril. Mr. Tyrrel has well observed on the words of the statute above-cited, *that if the first constant appearance of citizens and burgeses in parliament were but in the twenty third of Edward the First, from that time to the fifth of Richard the Second, was not eighty five years; and THAT, being within the memory of many men then alive, could not be called OF OLD or ANCIENT TIME, in the French, D'ANCIENTÉ*. Nevertheless there is reason to believe, that the same form of summons had not always been used; because it appears, that, in the forty ninth of Henry the Third, the writs were not sent to the sheriffs, but directly to the cities and boroughs.

See Tyrrel's
Appendix to
his History of
England,
P. 193.

Having now considered the claim of the town of St. Albans, I shall transcribe some records in the Tower of London concerning a petition
in

in the Tower of London concerning a petition in parliament to King Edward the Third, from the town of Barnstaple in Devonshire, wherein they set forth, that, among other privileges granted to them by a charter of King Athelstan, they had *from that time* enjoyed the right of sending two burgesses to serve for them in parliament. And first I shall give an extract from the writ of inquisition founded on that petition, which is recited therein. “ Sciatis, quod, cum nuper ad prosecutionem burgensium villæ de Barnstaple in com. Devon. per petitionem suam *coram nobis et consilio nostro exhibitam* nobis supplicantium, “ *ut cum villa prædicta, à tempore cujus contrarii memoria non existit, liber burgus fuerit, iidemque burgenses, et eorum antecessores, burgenses villæ prædictæ diversis libertatibus et liberis consuetudinibus, per cartam celebris memorie D. Athelstani, dudum regis Angliæ, progenitoris nostri, quæ ad liberum burgum pertinent à tempore consecutionis dictæ cartæ usi fuerunt et gavisi, in hoc, viz. quod tenementa sua in eodem burgo in testamento suo in ultimâ voluntate suâ quibuscunque voluerint legare, et majorem de se ipsis, coram quo omnia placita dictum burgum et suburbium ejusdem tangentia placitari et terminari debeant, eligere, ac ad singula parlamenta nostra, et dictorum antecessorum nostrorum, duos burgenses pro communitate ejusdem burgi mittere, nec non in singulis taxationibus &c. consueverunt :*” therefore the king ordered an inquest to be made into the truth of the facts therein alledged, and particularly *si carta illa fuerit amissa*, as the petitioners had set forth, and whether it would be proper to grant them another, confirming to them the same liberties, as they had desired.

See Escheat
Bundle 18
Edw. III.
dated June 23.
Regn. 14. n.
100.

In the return to this the jurors say, “ *Burgenses dictæ villæ ad singula parlamenta duos burgenses pro communitate dicti burgi mittere solebant ; item dicunt, quod nihil eis constabat de carta D. Athelstani, dudum regis Angliæ, prædictis burgensibus, seu eorum prædecessoribus, de diversis libertatibus seu consuetudinibus prædictis, ut asserunt, concessis.*” This not satisfying the burgesses, they obtained a writ *ad quod damnum*, to enquire *si prædicti burgenses dictas libertates eis per cartam prædicti Athelstani, ut prædicitur, concessas, a tempore prædicto usi fuerunt et gavisi, et si carta illa in formâ prædictâ fuerit amissa ; nec non ad quod damnum seu præjudicium nostrum aut alterius cujuscunque cederet, si nos dictas libertates eisdem burgensibus per cartam prædicti Athelstani, ut asserunt, concessas, nec non prædictas libertates per eos de novo petitas, prout superius continentur, per cartam nostram concedamus sibi et hæredibus et successoribus suis in perpetuum possidendas ; et ideo vobis mandamus, quod ad certos dies et locos, quos vos tres, vel duo*

Ibidem.

Dated 18,
May. 17 Edw.
III.

vestrum, ad hoc provideritis, inquisitionem illam super præmissis et ea tangentibus in formâ prædictâ faciatis, &c.

Dated 17.
Edw. III.

The return of this writ is as follows: "*Inquisitio capta apud Barnstaple coram Hamone de Derworthy et Joan. de Baumfeld, justiciariis D. regis ad inquisitionem illam capiendam unâ cum Joanne de Stonford et Ricard. de Hankeston, in præsent. Walteri de Horton, Vicecomitis Devon. die Sabbat. &c. an. regni Edw. regis Angliæ tertii 17, &c. per sacramentum R. de Wolfe &c. qui dicunt super sacramentum suum, quod villa de Barnstaple est liber burgus, et fuit a tempore quo non extat memoria. Item dicunt quod burgenses villæ prædictæ, et eorum antecessores diversis libertatibus et liberis consuetudinibus per cartam celebris memoriæ D. Athelstani, dudum regis Angliæ, progenitoris D. regis nunc, quæ ad dictum burgum pertinent, a tempore consecutionis cartæ prædictæ semper hætenus usi fuerunt et gavisi, et adhuc gaudent et utuntur, videlicet quod tenementa sua, &c. &c. ac ad singula parliamenta D. regis duos burgenses pro communitate ejusdem burgi mittere, nec non in singulis taxationibus &c. consueverunt. Dicunt etiam, quod prædicta carta, de prædictis libertatibus et consuetudinibus, eisdem burgensibus per prædictum D. Athelstanum facta, casualiter fuerit amissa. Item dicunt quod non est ad damnum seu præjudicium D. regis aut alterius cujuscunque, licet D. rex per cartam suam omnes libertates prædictas eisdem burgensibus et hæredibus &c. per cartam prædict. Athelstani prius concessas concederet in perpetuum possidendas.*"

Nevertheless another writ of the following year, after reciting the proceedings had upon the two former writs, says, that, upon complaint having been made, that the latter return had been artfully and unduly obtained, "*Nos advertentes, quod hujusmodi libertates absque gravi præjudicio nostro et damno et præjudicio aliorum non possunt concedi hominibus supradictis, præsertim cum dicta villa de nobis teneatur in capite, ut accepimus, et custodia ejusdem, nomine custodiæ, ad nos et hæredes nostros devolvi, firmaque comitatus prædicti in parte diminui, et alia incommoda tam nobis, quam aliis, evenire possent, volentesque eo prætextu super hiis plenius informari, assignavimus,*" &c.

The return to this inquisition finds, that *Joannes de Audley* held this borough of the king *in capite per baroniam*, contradicts the finding of the former returns in many points, and particularly says, "*Quod nichil eis constat nec constabat de cartâ D. Athelstani dudum R. Angliæ, per quam prædicti burgenses prætendunt sibi et eorum prædecessoribus quasdam fuisse libertates concessas.*" But with regard to their right of sending burgesses to serve for them in parliament *from time immemorial*, which the two former

former returns had acknowledged and confirmed, it says nothing. And we find that they continued to send them uninterruptedly after this time, without any new charter or franchise granted to them, but purely by *prescription*.

Now, granting that the pretended charter of Athelstan, the existence of which is admitted by the second of these returns, but left doubtful by the first and last, did never exist, yet still these records are of great importance to the question of which I am treating. For, if no burgeses had been sent to parliament before the forty ninth year of King Henry the Third, how is it possible that the *Concilium Regis*, within fourscore years after that remarkable epocha, viz. in the seventeenth of Edward the Third, should have suffered that prince to order an inquisition to be made into the truth of an allegation so apparently false, as that the burgeses of Barnstaple had enjoyed a right of sending two members to serve for them in all the parliaments of his royal predecessors *from the time of King Athelstan*? or what evidence could induce jurors, upon the second inquisition before two of the king's justices and the sheriff of Devon, to find a fact which the whole county, and indeed the whole kingdom, must have been able to contradict from publick notoriety? The absurdity would be still greater, if the practice of summoning burgeses to parliamentary meetings be dated from the twenty third of Edward the First, as it is by many writers. But the clear inference from these proceedings appears to be, that the custom of sending members from cities and towns to parliaments, or great councils, was then known to be ancient; and the question was whether Barnstaple was entitled to that privilege, either by charter or prescription. In the final issue we find, that, with regard to the charter, which the burgeses of that town pretended to have lost, sufficient proof was not given; and therefore the other privileges, which they claimed in virtue thereof, were not confirmed or renewed: but this of sending representatives to serve for them in parliament was admitted to be good, *from long usage and prescription*, though it was determined that they did not hold immediately of the king, but were the tenants of John de Audley, one of his barons, who held the borough of him *in capite* by baronial service. From whence it is evident, that the right of sending members to parliament was not confined to a *tenancy in chief of the crown*, but might belong to *subvassals*.

I shall conclude this note with a passage from the great antiquary, Mr. Lambard, in his *Archaionom*. "Now as these written authorities" (viz. the Saxon laws he had quoted) "do undoubtedly confirm our as-

“sertion of the continuance of this manner of parliament, so is there also
 “unwritten law, or prescription, which does no less uphold the same:
 “for it is well known, that in every quarter of the realm a great many
 “boroughs do yet send burgessees to the parliament, which are neverthe-
 “less so antient, and so long since decayed and gone to ruin, that it can-
 “not be shewed they have been of any reputation since the conquest, and
 “much less that they have obtained this privilege by the grant of any
 “succeeding king: *so that the interest which they have in parliament*
 “*groweth from an antient usage before the conquest, whereof they cannot*
 “*shew any beginning.*”

Ibid. By a statute of the fifth year of Richard the Second it is enacted,
 “that all and singular persons and commonalties, which from hence-
 “forth shall have the summons of the parliament, shall come from hence-
 “forth to the parliaments in the manner as they are bound to do, and
 “have been accustomed, within the realm of England, of old times,”
 &c.

See Harley's
 Mss in the
 British Mu-
 seum, class II.
 press 1. shelf
 B.

Besides this remarkable testimony of the whole legislature in the reign
 of Richard the Second, to the antiquity of the custom of the commons
 coming to the parliament, we have a petition of the commons in the
 second parliament of the reign of Henry the Fifth, which sets forth
 to that prince, “that, as it hath ever been their libertie and freedom,
 “that there should no statute nor law be made, unless they past thereto
 “their assent, considering that the commune of your land, the which is
 “and ever hath been a member of your parliament, be as well assenters as
 “petitioners,” &c.

P. 280, 281. “And if any person of the same realm, which from henceforth
 “shall have the said summons, be he archbishop, bishop, abbot, prior, &c.
 “do absent himself, and come not at the said summons (except he may
 “reasonably and honestly excuse himself to our lord the king) he shall be
 “amerced and otherwise punished, according as of old times hath been
 “used to be done within the said realm in the said case.”

In the twelfth of Richard the Second, the abbot of St. James's
 Northampton, being summoned to parliament, petitioned to be dis-
 charged, because he was not a tenant *by barony*, nor *in chief* of the king.
 The words are these: “Non tenet *per baroniam*, nec *de rege in capite*;
 “sed tantum *in puram et perpetuam eleemosynam*; et nec ipse abbas, nec
 “predecessores sui, fuerunt ad parliamentum citati huc usque. *Unde*
 “*petit remedium et habuit.*” Again, in the twenty sixth year of Edward
 the

the Third, the abbot of Leicester was discharged from all attendance in parliament on the like suggestion, because he held not of the king *per baroniam seu alio modo, per quod ad parlamenta seu concilia nostra venire teneatur*. V. Rot. Pat.
26 Edw. III.
p. 2. m. 22.

I would observe on these records, that, as before the reign of William the Conqueror all ecclesiastical dignities, as well those which held of the king as others, were *ad puram et perpetuam eleemosynam*; and as the alterations made by William affected only those which held immediately of the crown, it is no wonder that men who were possessors of such dignities *not holden of the crown*, and who much desired an exemption from all secular services, should not acquiesce in an extension of that alteration; and therefore these abbots very properly petitioned against being summoned to parliament contrary to the privilege of their tenure; and the king answered very justly to the petition of the latter, that *nolentes illum indebite vexari* he discharged him from that service. But nothing can be inferred from hence to prove the positions, which some writers have laid down, that no freeholders had antiently a share in the legislature, except *tenants in chief*, and that all service in parliament was then considered no otherwise than as a trouble and burthen, which every member of parliament desired to be exempt from, and endeavoured to avoid.

The statute itself, which is the subject of this note, has been alledged as an argument, to shew how unwillingly our parliaments were attended, when it was necessary to enforce the performance of that duty by a particular law: but the disturbed and tumultuous state of those times, when it was dangerous to pass from one part of the realm to another, may better account for this statute; and that the chief object of it was to enforce the attendance of the *spiritual barons*, I think very probable; as we know, that their desire of a total separation from the laity in all acts of government, made them remiss in the performance of their duty.

Indeed, some time before, namely, in the eighteenth year of Edward the Third, notice is taken in the record of parliament, *that sundry of all estates were absent from the parliament and convocation then assembled*: “at which” (says the record) *the king did no less muse, than he was thereat offended*: “wherefore he charged the archbishop, for his part, to punish the defaults of the clergy, and he would do the like touching the parliament.” (See Cotton’s Abridgement of the Records, p. 43.) But the king’s surprise on this occasion, as well as the offence that it gave him, shews, that such absence was unusual, and must certainly have had some extraordinary cause. It was customary in those times, if the parliament was not quite full at the first meeting, to adjourn for a day or two, till the absent members came in; and by the records it appears, that the lords

V. Prynne's
Preface to
Cotton's A-
bridgement of
the Records in
the Tower.

lords sometimes, and the commons frequently, were called by name the first day of the parliament's sitting, and such of them as were absent without just cause were both blamed and fined. Even in our days it is necessary to enforce the attendance of members by *calls of the house*, and sometimes by the punishment of those who disobey them.

P. 281. *But besides these authorities, drawn from statutes and records, very evident indications of the presence of the people in the national councils, and of their being constituent parts thereof, though, indeed, in a confused, disorderly manner, are to be found in some ancient histories, and contemporary accounts of transactions in parliament, during the times which I write of; viz. from the death of Edward the Confessor to that of Henry the Second.*

Gervase of Canterbury, speaking of the promotion of Lanfranc to that metropolitan see, in the reign of William the Conqueror, says it was done, "*Eligentibus eum senioribus ejusdem ecclesiæ, cum episcopis et principibus, clero et populo Angliæ, in curia regis*" Here the *clerus et populus* are mentioned separate and distinct from the *episcopis et principibus*, and therefore cannot, by any natural construction, be understood to mean the same persons. Moreover, in the account of the same transaction, published at the end of Taylor's Gavelkind, it is said, that the king committed to Lanfranc the church of Canterbury, "*consensu et auxilio omnium baronum suorum, omniumque episcoporum et abbatum, totiusque populi Anglicani.*" These words seem to afford a very evident testimony, that *the people were present* in these parliaments, and *acted therein, conjointly with all the spiritual and temporal barons.* But in the Chronicle of Litchfield, and likewise in Roger de Hoveden, mention is made of one that was very particular. The words of the Chronicle

Wilkins Leg.
Anglo-Saxon.
p. 216.
& Seldeni
Not. ad
Eadm. p. 171.

of Litchfield are these: "*Anno Gulielmus regni sui quarto, apud Londonias, consilio baronum suorum fecit summoneri per universos Angliæ comitatus omnes nobiles, sapientes, et suâ lege eruditos, ut eorum leges et consuetudines audiret &c.* Under *per præceptum regis Willielmi electi sunt de singulis totius Angliæ comitatibus XII viri sapientiores, quibus jurerando injunctum fuit, coram rege Willielmo, ut quoad possent recto tramite, neque ad dextram neque ad sinistram partem divertentes, legum suarum consuetudinem et sancita patefacerent, nil prætermittentes, vel prævaricando mutantes.*" The account in Roger de Hoveden is to

V. Hoved.
Annal. f. 343.

P. 104. 107.

the same effect, with very little difference in the expressions. The Lord Chief Justice Hale says, in his History of the Law, *This appears to be as sufficient and effectual a parliament as ever was held in England.*

Neverthe-

Nevertheless it must be noted, that the election of *twelve men from every county* does not appear to have been usual in other parliaments, or great councils: at least we have no account, in any record or history, of just *that number* having been sent upon any other occasion.

Eadmer, who lived in the reign of William Rufus, has given an account of a parliament held under that prince, on an extraordinary occasion, viz. for the determining of a dispute between the crown and Archbishop Anselm, on a question of great importance to the church and the state. He calls it *placitum, quod totius regni adunatione apud Rockingham habitum est*. He was present in it himself, and has set down all the particulars of what was done there. The general description of the assembly is in much the same terms, as other Historians of that age were accustomed to use in describing our parliaments: *Episcopis, abbatibus, cunctisque regni principibus una cœuntibus, &c.* But besides these he takes notice of a *great multitude* of monks, clergymen, and laymen, who were present, and assistant, and to whom, as well as to those of a superior rank, the archbishop addressed his discourse. “Anselmus autem episcopis, abbatibus, et principibus ad se à regio secreto vocatis, eos et assistentem monachorum, clericorum, laicorum, numerosam multitudinem hac voce alloquitur.” From what follows it is evident, that he submitted the question, for the discussion of which the parliament had been called, to the determination of the whole assembly. “Omnes, dico, qui hic congregati estis in nomine domini precor intendite, et causæ, propter quam ventilandam adunati estis, pro viribus opem vestri consilii ferte.” He applied indeed more particularly to his brethren, the bishops; “Omnes itaque, sed vos præcipue, fratres et cœpiscopi mei, precor et moneo, quatenus istis diligenter inspectis, studiosius, sicut vos decet, quo inniti queam mihi consilium detis.” But this no more excluded the rest of the assembly from giving their opinion on the question in dispute, than it did the temporal barons. On the contrary, the beginning of this very paragraph says, that *all* were desired to *hear and consider it, in order to form their advice to Anselm upon it*. It appears, that, at first, all the spiritual and temporal lords, and perhaps other chief men, comprehended under the word *principes*, here used by Eadmer, were with the king in an inner room: from whence they were called out into the church of the castle, which was the place of the general assembly, to hear the question proposed to them by Anselm. “Anselmus autem episcopis, abbatibus, et principibus ad se à regio secreto vocatis, eos et assistentem monachorum, clericorum, laicorum, multitudinem, hac

V. Eadm. hist.
nov. l. i.
p. 26, 27.

NOTES TO THE SECOND BOOK OF

“ hac voce alloquitur.” And they occasionally went backwards and forwards, several times, in the course of the deliberation. “ Omnes igitur assidentes oppido turbati, cum magno tumultu surrexerunt, &c. Quibus dictis ad regem reversi sunt.” And afterwards, “ Factâ itaque longâ morâ redeunt episcopi cum nonnullis principibus à rege dicentes,” &c. And again, “ reversi ad regem persuaferunt inducias nullâ ratione dandas, &c. Cum igitur (episcopus Dunelmensis) regi persuasisset quæsitâ inducias Anselmo non esse dandas, comitatus quam pluribus, qui verba sua suo fulcirent testimonio, ad virum ingrediens ait, Audi quæ moniam regis contra te,” &c. And upon hearing Anselm’s answer, they again returned to the king, “ Quibus auditis, aspicientes se invicem, nec invenientes quid ad ista referrent, ad dominum suum reversi sunt.” While they were with the king, they, at first, consulted together with some regularity; but afterwards talked to one another, without order, and in small, separate parties. “ Ad quæ rex vehementer iratus cum episcopis atque principibus intentissime quærere cæpit quid dictis ejus objicere posset, nec invenit. Scandalizati ergo inter se abinvicem sunt in partes divisi, et hic duo, ibi tres, illic quatuor in unum consiliabantur,” &c. These Eadmer calls afterwards *conciliabula*, and certainly they were not agreeable to the regular forms either of a council or a parliament. But when, in consequence of what had been thus irregularly determined, the bishop of Durham, with all his brethren, and many of the temporal nobles, had spoken very strongly, before the whole assembly, against Anselm, and after hearing his answer had returned back to the king, a murmur arose, from all the multitude in the church, upon the wrong done to that prelate. Yet they only complained of it, in a low voice to each other, none of them daring to speak openly for him, out of fear of the king, whom Eadmer calls *the Tyrant*. But at last, a knight, or military tenant, *miles unus*, coming forth from the multitude, which seems to have been thronged promiscuously together, knelt down before Anselm, and in the name of them all entreated him not to be disturbed at what had been said to him, &c. whereupon (says the Historian) Anselm understood, that the opinion of the people was with him; at which he and those who belonged to him were much rejoiced and encouraged, trusting, according to the Scripture, that the voice of the people was the voice of God. “ Ortum interea murmur est totius multitudinis pro injuriâ tanti viri summissa inter se voce querentis. Nemo quippe palam pro eo loqui audebat, ob metum tyranni. Veruntamen miles unus, de multitudine prodiens, viro astitit, flexis coram eo genibus dicens, Domine pater, rogant te per me supplices filii tui ne turbetur cor tuum ex iis

“ quæ

“ quæ audisti, &c. Quæ verba dum pater comi vultu accepisset, intel-
 “ lexit animum populi in sua sententia secum esse. Gavisi ergo exinde sumus,
 “ et æquanimiores effecti, confidentes juxta scripturam, vocem populi vocem
 “ esse Dei.” Whether, in the *multitude*, from which this *miles* came
 forth, and in whose name he spoke to Anselm, any or all the representa-
 tives of counties, cities, and boroughs, were comprehended; or whether
 any such were included in the general denomination of *proceres et prin-*
cipes regni, is not sufficiently clear from this passage. It appears, that
 Anselm sat in the midst of the *proceres* and of the *multitude thronged*
together. “ Anselmus in medio procerum et conglobatæ multitudinis
 “ sedens ita orsus est,” &c. Eadmer, who was chaplain to Anselm, seems
 to have had a seat near him, “ Mane autem reversi sedimus in solito loco
 “ expectantes mandatum regis:” but this seat might be granted to him,
 upon this occasion, rather for the convenience of that prelate, than in his
 own right. However this may have been, it is evident from the passages re-
 cited above, that many regular and secular clergymen, and many laymen
 of a degree inferior to the *proceres et principes regni*, were present and
 assistant in this great council. I need not observe that even now, when
 the two houses are together in the same place, the peers *sit*, and the
 commons *stand*.

The same contemporary author gives us also an account of a par-
 liament held in the year 1100, by King Henry the First, wherein
 “ tota regni nobilitas cum populi numerositate Anselmum inter se et regem
 “ medium fecerunt, quatenus ei, vice sui, manu in manum porrectâ, pro-
 “ mitteret justis et sanctis legibus se totum regnum, quoad viveret, in
 “ cunctis administraturum.” This promise, which may be called a con-
 firmation of his charter under the guarantee of Anselm, being solemnly
 given in parliament, at the desire of the whole nobility of the kingdom and
 of a numerous assembly of the people, who are spoken of as present and con-
 curring with the former, is another strong evidence, not only of the
 attendance of the commons in the parliaments held during those times,
 but of their taking part in the business transacted therein, and being con-
 sidered as members of the great council of the nation. It appears, that
 this meeting was in solemnity Pentecostes, when the nobility met of
 course; but I have observed before, that it was frequently the practice
 of those times to convert those lesser assemblies into full and compleat
 parliaments, by summoning the commons to attend them.

In the year eleven hundred and fourteen a great council was convened
 by Henry the First, in which Radulph bishop of Rochester was elected
 archbishop of Canterbury. The monks of Canterbury, in their epistle

V. Eadm.
hist. nov. l. v.
p. 111, 113.

to the pope on that subject, which the beforementioned Historian has given us, wrote thus: "*Adunato conventu totius Anglici regni in præ-*
"*sentiâ gloriosi regis nostri, Henrici, electus à nobis, et clero, et populo est*
"*ad regimen ipsius ecclesiæ Radulphus, &c.* Huic electioni affuerunt
"*episcopi, abbates, et principes regni, et ingens populi multitudo, consen-*
"*tiente domino nostro rege, et eandem electionem laudante, suâque*
"*auctoritate corroborante.*" The mention here made of *a multitude of*

V. Epist. Hen.
reg. in Chron.
Brompton,
p. 999.

people assisting together with the bishops, abbots, and nobles, or chief men of the kingdom, in the election of a primate, which appears to have been made in full parliament, or (to use the words of the letter) in *an assembly of the whole kingdom*, is an authority which much corroborates the passages above-cited. I will add, that we have a letter from King Henry the First to the pope, on another occasion, in which he says,
"*Notumque habeat sanctitas vestra, quod, me vivente, Deo auxiliante,*
"*dignitates et usus regni Angliæ non minuentur.* Et si ego, quod absit,
"*in tantâ me dejectione ponerem, optimates mei, immo totius Angliæ*
"*populus id nullo modo pateretur.*" From these words it appears, that this king himself was of opinion, and made no difficulty of declaring to the pope, *that he could not give up the dignities and customs of his kingdom without the consent of the nobility and people of England*: a very strong proof, both that our *monarchy* was not then *absolute*, but *limited by the parliament*; and that the *limiting power* was vested in the *people*, as well as in the *nobles*.

I come now to consider the reign of King Stephen with relation to this point. Of a great council, or parliament, held in the first year of that king, Henry of Huntingdon, a contemporary historian, writes thus:

V. Gest. Ste-
phan. regis
apud Du
Chesne, p.
932, 933.

"Rediens autem inde rex Stephanus in Quadragesimâ tenuit curiam
"*suam apud Lundoniam in solemnitate Paschali, quâ nunquam fuit*
"*splendidior in Angliâ multitudine, magnitudine, auro, argento, gem-*
"*mis, vestitu, omnimodâ dapfilitate.*" By these words it appears, that this was a council held, as usual, at Easter, and one of the fullest that had ever been seen in England. The contemporary author of the Acts of King Stephen speaks also of the same assembly in the following words: "*Omnibus igitur summatibus regni fide et jurejurando cum rege*
"*constriktis, edicto per Angliam promulgato, summos ecclesiarum ductores*
"*cum primis populi ad concilium Londonias convocavit.* Illis quoque
"*quasi in unam sentinam illuc confluentibus, Ecclesiarumque columnis*
"*sedendi ordine dispositis, vulgo etiam confuse et permixtim, ut solet, ubique*
"*se ingerente, plura regno et ecclesiæ profutura, fuerunt et utiliter ostensa,*
"*et salubriter pertractata.* De ecclesiæ siquidem statu in melius com-
"*ponendo,*

“ponendo, de ejusdem libertate multiplicius restauranda splendide non-
 “nulla in ipsâ regis præsentia perorarunt,” &c. This is a very remarkable passage. It appears by it, that the king had summoned to this council *the prelates or governours of the church, with the chief of the people; ecclesiarum duces cum primis populi*. But there was in the assembly a lower order of people called, by this writer, *vulgus*, who did not sit, as the prelates and nobility did, in an orderly manner, but crouded in *confusedly and promiscuously, according to custom*. “*Ecclesiarumque columnis sedendi ordine dispositis, vulgo etiam confuse et permixtim, ut solet, utique se ingerente,*” &c. Now this perfectly well agrees with the expressions of *populi numerositas, conglobatæ multitudinis, et assistentem monachorum, clericorum, et laicorum numerosam multitudinem*. But I suspect there is an error, either of the press or of the manuscript from whence it was printed, in the first part of the sentence. Instead of *illis quoque, quasi in unam sentinam, illuc confluentibus*, I think it should be *aliis*. And then it will run thus: “*Edicto per Angliam promulgato, summos ecclesiarum duces cum primis populi ad concilium Lundonias convocavit. Aliis quoque, quasi in unam sentinam, illuc confluentibus, ecclesiarumque columnis sedendi ordine dispositis,*” &c. This is much better sense; and then it will appear from the whole passage so corrected, that the chief of the clergy and laity having been summoned to attend this council, by the king’s edict, or mandate, published over all England, others of an inferior degree came in also, confusedly and promiscuously, as they had been used to do on such occasions. This historian indeed has mentioned only the prelates as *sitting* in the assembly; but it must be understood that the lay nobility, of all ranks and degrees, enjoyed the same distinction. We also find, that in this parliament the king was personally present at all the debates, and not, *in secreto regio*, with the nobles alone, as in that described by Eadmer, but together with the *vulgus*. “*Vulgo etiam confuse et permixtim, ut solet, ubique se ingerente, plura regno et ecclesiæ profutura fuerunt et utiliter ostensa, et salubriter pertractata. De ecclesiæ siquidem statu in melius componendo, de ejusdem libertate multiplicius restaurandâ splendide nonnulla in ipsâ regis præsentia perorarunt.*” Nor is any distinction made, or intimated, as if the decision, or even the discussion, of the matters agitated before him, in this mixed assembly, was confined to the nobles. Yet they were points of the highest nature; and, if the constitution in those times admitted the *vulgus* to participate in such consultations, we may confidently assert, that a popular power was mixed with the aristocratical in the great councils of the nation. But we must not suppose that this *vulgus*, or
 O 2 the

the *populi numerositas* beforementioned, included any persons who were not *free members of the community*; such as originally had a right to assist in great councils. Our parliaments under the government of the Normans were *contracted images* of the general assemblies held in open plains by the first founders and lawgivers of the English nation. And they still retained a great deal of the confusion and irregularity natural to those assemblies.

V. Gerv.
Chron. sub
ann. 1157.

In the year 1157, a parliament was called to meet at Northampton by King Henry the Second, of which Gervase of Canterbury, a contemporary writer, gives this description. "*Convocati sunt ad eum præfules et principes regni, aliæque inferioris ordinis personæ* apud Northampton. Post varios autem sermones, *et regni negotia*, actum est etiam *de professione Silvestri abbatis archiepiscopo Cantuariensi faciendâ.*" The *aliæque inferioris ordinis personæ*, mentioned here after the *præfules et principes regni*, as *convened* by the king, were, I presume, the inferior tenants in chief of the crown, and such representatives of the commons as were *summoned* to parliament, but were not of a rank and dignity to be reckoned among the nobility.

P. 83.

Matthew Paris mentions a controversy between the bishop of Lincoln and the church of St. Albans, which was decided in a great council held at Westminster under King Henry the Second, in the year 1162, at which were present the king himself, the two archbishops, nine bishops, the earl of Leicester grand justiciary, with earls, barons, abbots, *archdeacons, et innumera turba regni.*

V. Stephanid.
in vitâ S. T.

Soon after this was held the famous council of Clarendon, which Mr. Selden calls *that great parliament*. It is termed by Fitzstephen, a contemporary writer, *generale concilium*. Matthew Paris, in reckoning up the several persons in this council, who swore to observe the laws there enacted, says, "*Archiepiscopi, episcopi, abbates, priores, clerus, cum comitibus, baronibus, et proceribus cunctis juraverunt,*" &c. Now *clerus*, being thus named after archbishops, bishops, abbots, and priors, shews that other clergymen of a rank inferior to these were present in that council. The same historian says it was held *in præsentia regis Henrici, præfidente Jobanne de Oxonia*. This is the only mention I meet with, of the person who presided in any parliament of those times. John of Oxford was then of no higher dignity than king's chaplain.

V. Constitut.
in Append.

In the preamble or preface to the Constitutions of Clarendon, it is said, "*Facta est ista recognitio coram archiepiscopis et episcopis, et clero, et comitibus, et baronibus, et proceribus regni. Et easdem consuetudines recognitas per archiepiscopos, et episcopos, et comites, et barones,*"

“barones, *et per nobiliores et antiquiores regni*, Thomas Cantuariensis &c.
 “concefferunt,” &c. And at the end of them, “Facta est autem præ-
 “dictarum consuetudinum et dignitatum recordatio regiarum, à præfatis
 “archiepiscopis, et episcopis, et comitibus et baronibus, *et nobilioribus et*
 “*antiquioribus regni* apud Clarendonam,” &c. In these descriptions,
 which are short and general, like all the others of our ancient laws and
 statutes, the words of the most uncertain signification are the *proceres* and
 the *nobiliores et antiquiores regni*, mentioned after earls and barons. I am
 inclined to believe, from the authorities before-cited, and others that will
 hereafter be given on this subject, that these *proceres et nobiliores regni* were
 the tenants in chief of the king below the rank of barons, the knights of
 shires, and the representatives of the principal cities. But whom are
 we to understand by *antiquiores regni*. The Saxon word *ealdormen*, of
 which these Latin words appear to be a translation, signified the senior or
 superior magistrates in any community. Sir H. Spelman, in his Glos-
 sary, explains it thus: “Multipliciter autem occurrit apud Anglo-
 “Saxones, utpote *pro seniore vel superiore in quavis præfectura*.” Of
 which he gives many proofs. It may then be thought, that, by the
antiquiores regni here mentioned, some such are denoted; and that, as
 they are named after barons, they probably were not of high rank.
 But other testimonies shew, that they have a particular reference to those
 old men, of different orders and degrees, who were ordered to recollect,
 and set down in writing, the ancient customs of the realm. For, in the
 account that is given of this council by Gervase of Canterbury we find
 these words: “Crastino autem, cum in unum convenissent, et de-
 “hesternæ diei serie pauca retulissent, sciens rex quod qui major ætate
 “major est et iniquitate, Ite, ait, ætate et sapientia provectiores, et avi mei
 “consuetudines disquirite, ut in scriptum redactæ deducantur in me-
 “dium,” &c. The bishop of London also says, in a letter to Becket
 concerning this transaction, that the ancient customs of the kingdom
 were set forth and put into writing *antiquorum memoria*. And in an-
 other epistle, from all the clergy of the province of Canterbury to the
 pope, we find these words: “Adjuratis itaque per fidem, et per eam quæ
 “in Deum spes est, majoribus natu episcopis, aliisque regni majoribus, re-
 “troacti temporis insinuato statu, dignitates requisitæ palam prolatae sunt,
 “et summorum in regno virorum testimoniis propalatae.” It is not im-
 probable, that some old magistrates, well acquainted with the ancient
 customs in judicial proceedings, were summoned to parliament with a
 particular view to this enquiry, namely the *seniores in quavis præfectura*:
 and very possibly the oldest magistrates in towns and boroughs may
 have

See it in the
 Appendix to
 the next book.
 Epist. 126.
 e Cod. Cotto-
 niano.
 V. Epist. 128.
 lib. i. e Cod.
 Vatican.

have been their representatives in the times of Henry the Second. I would here observe, that if the omission of naming representatives of counties, cities, or boroughs, in the descriptions of this council, be taken as a proof that none were in it, that proof will hold as strong to shew, that no tenants *in capite* of the king *inferior to barons* were present therein: but, that *all* who held of the king *in capite* had a right to be present *in generali concilio*, which this is said to have been, has before been proved from old Records. Among these tenants there were many,

See the note on the Record of the 15th of King John, cited by Brady.

who, in King Henry the First's charter, are distinguished from barons. "Siquis *baronum meorum*, comitum, *vel aliorum qui de me tenent*, mortuus fuerit," &c. And again, in another clause, "Siquis *baronum vel aliorum hominum meorum* filium suum nuptum tradere voluerit," &c.

And a contemporary author says, that to the parliament of Northampton, where Becket was arraigned, all the tenants in chief were summoned.

V. Stephan. in vitâ S. T. Selden's Titles of Honour, part ii. p. 733.

See also Rot. Claus. 19 H. III. dorso. & Brady's answer to Petit, p. 69.

"In castro Northamptoniæ solemne statuens (rex) celebrare concilium, "omnes qui de rege tenebant *in capite mandari fecit*." Whereas many other writers, in describing that parliament, mention only prelates, earls, and barons. Indeed the historians of this and the following century seldom take notice of any but the greater nobility in parliamentary councils. And from this silence a negative argument has been drawn against the existence of any others in such assemblies. But this proof is overturned by positive testimonies from other contemporary historians, and sometimes from themselves.

V. M. Paris, sub ann. 1246.

Thus Matthew Paris, in the description he gives of a parliament, which he terms *a most general one*, in the thirtieth year of King Henry the Third, mentions none of the laity, but earls and barons, and none of the clergy, but bishops, abbots, and priors. "Medio vero Quadragesimæ, edicto regio convocata, *convenit ad parliamentum generalissimum totius regni Anglicani totalis nobilitas Londini, videlicet, prælatorum, tam abbatum et priorum, quam episcoporum; comitum quoque et baronum, ut de statu regni &c. contrectarent*." A stronger passage can scarce be found in any writer, to countenance the opinion, that so late, as in the thirtieth year of King Henry the Third, our *most general parliaments* consisted only of the *nobility of the kingdom*, and that by the *nobility* none were meant but prelates, earls, and barons. Yet this very author will himself furnish an evident proof, that in this same parliament, not only all the tenants in chief, but *the whole clergy and people* were present, and participant in the acts done therein. For he tells us, that when the king had laid before his parliament several articles, "super gravaminibus et oppressionibus ecclesiæ et regni sui &c. Hæc attendentes universi ac

P. 469.

"singuli

“ singuli unanimiter consenserunt, ut adhuc, ob reverentiam sedis apostolice, D. Papæ humiliter ac devote, tam per epistolas, quam per solemnes nuncios, supplicarent, ut tam intolerabilia gravamina et jugum subtraheret importabile. Scripserunt igitur D. Papæ in hæc verba.” He then recites the letters they wrote to the pope, of which the first is from the bishops of the province of Canterbury; the second from all the abbots and priors of England in the name of themselves and their convents; and the third runs in these words: “ Sanctissimo &c. “ Devoti filii sui, comes Cornubiæ Richardus, Simon de Monteforti, “ comes Legrecestræ, de Boun comes Herefordiæ et Essexiæ, R. le “ Bigod, comes Northfolkiæ, R. comes Gloverniæ et Herefordiæ, R. “ comes Wintoniæ, W. comes Albemarlæ, H. comes Oxoniensis, et “ alii totius regni Angliæ barones, procures, et magnates, *ac nobiles portuum maris habitatores*, nec non *et clerus et populus universus*, salutem,” &c. Here *the inhabitants of the Cinque Ports* (of whom no mention was made in the description above given) are added to the barons *and other nobles and chief men of the kingdom*, as concurring in this epistle; and over and above all these, *the whole clergy and people*. Many other instances may be given, how little stress ought to be laid, for the determining of this question, on the silence of writers about the commons, in the short and inaccurate accounts of great councils or parliaments, which we commonly meet with, during this period of our History; but I will only produce one more, from the Annals of Burton, which speaking of a parliament held in the thirty ninth year of Henry the Third describe it thus: “ Post festum S. Michaelis autem tenuit rex parliamentum suum apud Westmonasterium, convocatis ibidem *episcopis, abbatibus, et prioribus, comitibus et baronibus, et totius regni majoribus*.” “ From whence (says Dr. Hody) one would at first sight conclude that the *inferior clergy* were not present. But from hence it appears, that we ought not to rely on such kind of enumerations.” For immediately it follows, “ In quo petebat à *clero* de laicis feudis suis sibi suffragium exhiberi &c. “ disponens, de suo consilio iniquo, hoc prius à *clero*, et postmodum à *populo majore et minori* extorquere. Episcopi vero, abbates, priores, “ *et procuratores qui ibidem pro universitate affuerunt*, nolentes hujusmodi “ *exactioni acquiescere*,” &c.

V. Ann. Burton, sub ann. 1255. P. 355. Hist. of Con-vocat. P. 345.

If these proctors, who were there for the whole body of the clergy, had not been thus expressly named in the following paragraphs, together with the *populus minor*, or commons, the foregoing description might have been brought to confirm Dr. Brady's assertion, that none but tenants in chief were to be found in our parliaments before the forty ninth of Henry

NOTES TO THE SECOND BOOK OF

Henry the Third : whereas now we are assured by the testimony of these annals, that even this mode of representation had taken place before that time. Indeed the learned Dr. Wake, in his book against Atterbury, on the State of the Church and Clergy of England (p. 202.) supposes, that the proctors here mentioned were not present in parliament, but only in a legatine council held at the same time. This is setting aside the authority of those Annals, because they disagree with his Hypothesis. But how could the writer of them, *who lived himself at that time*, have made such a mistake, if no proctors for the clergy had ever come to parliament before the twenty third year of Edward the First ?

V. Append.
to the next
book, Epist.
126.

Having thus shewn the insufficiency of the argument drawn, by many eminent writers, against the presence of the commons in our ancient legislature, from the general silence of historians who lived in those times, I shall proceed to lay before the reader such descriptions of parliaments in the reign of Henry the Second, as seem to contain a degree of positive evidence which may give light to this question. Gilbert Foliot, bishop of London, in the letter to Becket beforementioned, where he is speaking of the parliament convened at Northampton, for the trial of that prelate and other business of the kingdom, says, "*Convenit populus ut vir unus :*" It would be a great force on the natural meaning of the word, to construe *populus* here as comprehending only the nobility and tenants in chief of the crown. At the same time it is evident, that *the whole body of the people* (which is the proper and obvious sense of the term) could not have assembled in that town or castle, otherwise than by some mode of representation. Such indeed of the inferior clergy, or lay-freeholders, as resided in or near Northampton, might be personally there, *confuse et permixtim* ; but they whose abode was far distant, and large communities of men, could only come thither by *procurators*, or *representatives*. And in this way the expression, *convenit populus ut vir unus*, is intelligible and just. The bishop of London, after having mentioned this great attendance at Northampton, in consequence of the king's summons, goes on in these words : "*Et assidentibus sibi, quorum id dignitati congruebat et ordini, quod dictum est super exspecto mandato suo, in querelam adversus vos, usus quâ decuit modestiâ et venustate, proposuit.*" A distinction is here made between the different ranks and orders of men comprehended before under the general word *populus*. It is said, that those, *to whose dignity and rank it belonged*, sitting near to the king, he modestly laid before them his complaint against Becket : which implies that others were present, who were not of a rank and dignity to be seated in this assembly. Of the course of the proceedings I shall

I shall say more in another part of this work. It will be sufficient here to observe, that the business of this assembly, which Brompton expressly calls *parliamentum*, and which certainly was more than the ordinary *curia regis*, appears not to have been confined to the trial of Becket: for a contemporary author informs us, that a scutage was settled in it, for raising foot soldiers to be employed against the Welsh. And it is probable, that other matters were also considered in it, as the meeting was so general; though the historians, being monks, are so taken up with the affair of Becket, that they have omitted to mention them. In the author last-cited we find these words: "Consulentibus episcopis, comitibus, et baronibus Angliæ omnibus, Normanniæ pluribus." I presume that these *Norman barons*, who are mentioned here as consulting with those of England in this parliament, had lands and honours in the kingdom: for the writer takes no notice of it as an irregularity. Roger de Hoveden, in his account of the transactions in this council relating to Becket, has these words: "Et cum venisset ad aulam regis descendit et ipse, crucem suam bajulans, et intravit domum regis. Deinde intravit *exterio rem cameram* solus, portans crucem suam. Nullus enim suorum sequebatur eum. Et cum intrasset, invenit *plebem multam in eâ, seditque inter illos: rex autem erat in secretiori thalamo cum suis familiaribus.*" This is exactly agreeable to Eadmer's account of the parliament at Rockingham castle, where the king was *in secreto regio cum principibus*, and the *multitudo populi* was in the body of the church belonging to the castle. Hoveden afterwards calls this outward room *curia*. And in the passage above-cited he says the archbishop sat down among the commons, *invenit plebem multam in eâ, seditque inter illos*: which he surely would not have done, if they had been a mere *mob*. Another author of that age (Alanus in *Quadrilogo*) says, that the king expected him in this outward chamber, where Roger de Hoveden tells us the *multa plebs* was assembled; but, that, upon his coming in armed with the cross, the king retired into an inner room. "Intraturus cameram regis, ubi eum rex præstolabatur, ad ostium ipsum à crucis bajulo crucem accepit, et palam, cunctis videntibus, ipse eam bajulavit, &c. Audiens autem rex archiepiscopum armatum venire, &c. citius recessit in conclave interius." It is of no importance to the point I am considering now, which of these authors is right in this particular: but from both accounts it appears, that the chamber, in which Hoveden says the *plebs* was assembled, was the great chamber of the parliament. And the words of Gervase of Canterbury are much the same with those above-cited.

In the year 1188, a great council, or parliament, was held by Henry the Second at Gaintington near Northampton, in which a very heavy tax was laid upon the whole nation for the Crusade against Saladin. Hoveden says, "*Rex magnum convocavit concilium episcoporum, abbatum, comitum, et baronum, et aliorum multorum, tam clericorum quam laicorum.*" From these words, compared with, and explained by other passages, which I have cited before, we may suppose that this parliament, *the last of Henry the Second*, had in it all the inferior orders of freemen, both clergy and laity; that is, some of each order.

The reader may enquire, in what manner the opinion of the people was taken, when they were assembled in the confused and irregular multitudes before described. Of this I find no account that is absolutely certain; but a very probable conjecture may be drawn from a passage in the Continuation of the History of Florence of Worcester by another ancient writer. Describing a synod held at Westminster, in the year eleven hundred and twenty five, he says, "that all the prelates were there *cum innumerâ cleri et populi multitudine.*" He then recites the several canons, or decrees, which they made, and concludes them all with this form of words thrice repeated, "*Placet vobis? Placet:*" which undoubtedly was the manner of asking and giving votes made use of in that synod; from which we may reasonably infer, that the same was used in our parliaments, the resemblance between those and synods being then very great. So late, as in the twenty eighth year of King Edward the Third, we find, that the commons were told by the lord chamberlain, in the presence of the lords, that there were great hopes of bringing about a peace between England and France, by means of certain commissioners appointed, on both parts, for that purpose; but yet the king would not conclude any thing without the consent of his lords and commons, wherefore he demanded of them, in the king's name, whether they would assent and agree to a peace, if it might be had by treaty? to which the commons answered with one accord, that what should be agreeable to the king and his council in making of this treaty would be so to them: but being asked again, whether they consented to a perpetual peace, if it might be had, they all unanimously cried out, *Ouy, ouy, Ay, ay.* Mr. Tyrrel observes upon this, that parliamentary proceedings were not then reduced to that form and regularity which they have been brought to since that time; the commons here giving their opinion *viva voce*, and in the presence of the lords, to what the king demanded.

See Parliamentary History, p. 301,

P. 282. *But the assembly of the nobles was convened with more ease, and appears to have acted, not only as a council of state, and supreme court of judicature, but, as being authorised, by permission and common consent, to exercise some degree of parliamentary power, the limitations of which were not accurately defined.*

The words of Sir H. Spelman on this subject are remarkable: V. Spelman's
 "Magnum concilium plerunque intelligitur de summo illo concilio totius Gloss. MAG-
 "regni (quod parlamentum vocant) è tribus ordinibus constitutum. NUM CONCI-
 "Sub hoc autem nomine continetur aliàs aristocraticum illud, quod ad LIUM.
 "ardua etiam regni negotia cogeant aliquando reges veteres consimili brevi
 "quo et ipsum parlamentum, sed prætermissa plebe, et minori solennitate.
 "In magno enim concilio quod tenuit Edwardus III, anno regni sui 15.
 "circa festum translationis Thomæ Martyris (quod erat 7 die Julii), nec
 "40 dierum ratio in ejusdem summonitione habebatur, nec baronum
 "omnium convocatio: sed cum in parlamento Westmonasterii immediate
 "jam tum præcedente, 54 enumerati essent (præter episcopos) seculares
 "proceres, hic Londini evocabantur 22 tantummodo. De magno con-
 "cilio fit sæpe mentio in annalibus nostris; sed de quo prædictorum genere
 "intelligendum fuerit sæpe etiam dubitatur. Archiva consule.

The uncertainty how to distinguish these different councils in the accounts of ancient authors, which Sir H. Spelman here mentions, has occasioned much of the perplexity and variety of opinions among learned men about the share that the commons had in the parliaments of this kingdom before the forty ninth of Henry III. For a long time we can have no assistance from our archives, to which he refers us; nor, when they can be consulted, do they always afford so clear a light as might be desired.

Ibid. *The same magnificence in feasting was continued by his successor, but dropt by Henry the First.*

The words of William of Malmſbury, from whence I take this L. iii. f. 63.
 account, are as follows: "Convivia in præcipuis festivitibus sum-
 "ptuosa et magnifica inibat. Natale Domini apud Glocestriam, Pascha
 "apud Wintoniam, Pentecosten apud Westmonasterium agens quotan-
 "nis quibus in Angliâ morari liceret. Omnes eo cujuscunque pro-
 "fessionis magnates regium edictum accersebat, ut exterarum gentium
 "legati speciem multitudinis, apparatusque deliciarum mirarentur.
 "Nec ullo tempore comior aut indulgendi faciliior erat, ut qui adve-
 "nerant largitatem ejus cum divitiis conquadrate ubique gentium jacti-
 "tarent.

“ tarent. *Quem morem convivandi primus successor obstinate tenuit, secundus omisit.*”

By the last paragraph I do not understand that Henry the First laid aside the usual meetings of the nobility for the dispatch of publick business at Christmas, Easter, and Whitsuntide; but only that he omitted the custom of feasting with them in the liberal manner that had been practised by his father and brother, or, at most, that he did not constantly summon those assemblies as they had done.

P. 284. *although, in the twenty first year of Richard the Second, the commons had shewn, in a petition to the king, how that before those times many judgements and ordinances, made in the times of the progenitors of our lord the king in parliament, had been repealed and disannulled, because the state of the clergy were not present in parliament at the making of the said judgements and ordinances.*

In this petition the judgements may be understood to refer more particularly to the prelates, who had absented themselves from trials in the house of lords; but in the making of ordinances the clergy of the lower house were concerned, as well as those of the upper. Accordingly it appears, that, in consequence of this petition, a proctor was appointed to act for *them*, as well as for the prelates. And Bishop Burnet takes notice, that, in the second act of the same parliament (viz. in the twenty first of Richard II.) it is said, “ That it was first prayed by the commons, “ and that the lords spiritual, and *the proctors of the clergy*, did assent to “ it; upon which the king, by the assent of *all the lords and commons*, “ did enact it.” He adds, “ That the twelfth act of that parliament “ was a repeal of the whole parliament, that was held in the eleventh “ year of that reign, and concerning it, it is exprest, that the lords “ spiritual and temporal, *the proctors of the clergy*, and the commons, “ being severally examined, did all agree to it. From hence it appears, “ that these proctors were not only a part of the parliament, but were a “ distinct body of men, that did severally from all the rest deliver their “ opinions.”

P. 285. *The presence of the people in the Saxon councils, and their having had a share in the highest acts of legislature and government, even till the entrance of the Normans, seems to be proved very strongly, from the preambles of laws and other proceedings of those councils; and from the words of the best historians, who lived near to those times.*

The

The Preface to Ina's Laws is thus translated by Wilkins, "Ego Ina
 " occiduorum Saxonum rex, cum consilio et cum doctrinâ Cenredæ patris
 " mei, et Heddæ episcopi mei, et Erkenwoldæ episcopi mei, et *cum*
 " *omnibus meis senatoribus, et senioribus sapientibus populi mei, et multa*
 " *etiam societate ministrorum Dei*, consultabam de salute animæ nostræ, et
 " de fundamento regni nostri, ut justæ leges et justa statuta per ditionem
 " nostram stabilita et constituta essent," &c.

By these words it appears, that the Saxon legislature was composed of the king, *cum omnibus suis senatoribus*, which senators I take to have been the nobility of the kingdom, such as afterwards formed the ordinary council of lords under our kings of Norman race; et *cum senioribus sapientibus populi sui*, by whom I understand the deputies or representatives of the people, either by election or magistracy; et *cum multa etiam societate ministrorum Dei*, which words evidently denote the inferior clergy, mentioned by Eadmer as present in the parliaments of his times.

In the year 855, Ethelwolp, king of the West-Saxons, gave to the church the tythe of his kingdom, "*cum consilio episcoporum et principum,*
 " *præsentibus et subscribentibus archiepiscopis et episcopis Angliæ uni-*
 " *versis, nec non et Beorredo R. Merciæ, et Edmundo Estanglornm R.*
 " *abbatum et abbatissarum, ducum, comitum, procerumque totius terræ,*
 " *aliorumque fidelium infinita multitudine, qui omnes regium chirographum*
 " *laudaverunt, dignitates vero subscripserunt.*" By this last paragraph it appears, that the act or decree of the council was *approved by all present*, though *subscribed* by none but *the nobility, or dignified persons*. The Saxon constitution therefore required, not only *the presence*, but *the approbation, of the people*, to the enacting of a law: yet to mark the distinction between these, and the higher orders of the state, the nobility alone set their hands to the act. The *proceres totius terræ* here mentioned will take in all the *Thanes*, and perhaps the *seniores sapientes regni*. By the words *aliorumque fidelium infinita multitudine*, I understand an unlimited number of freeholders, the same as the *populi numerositas, et assistentem monachorum, clericorum, laicorum numerosam multitudinem*, mentioned by Eadmer, and the *Vulgus* spoken of by the author of the Acts of King Stephen. The late Sir John Fortescue Aland, one of the justices of the King's Bench, who was very learned in the Saxon language and legal antiquities, says, in his Preface to the Book of Chancellor Fortescue on the difference between an absolute and limited monarchy, "*that who-*
 " *ever carefully and skilfully reads the Saxon laws, and the prefaces or*
 " *preambles to them, will find, that the commons of England always in the*
 " *Saxon times made part of that august assembly.*"

There

V. Spelman's
 Councils, sub
 ann. 855.

V. H. Hunt.
Hist. lib. iv.
f. 196.

There is a remarkable passage in Henry of Huntington, concerning the deposition of Sigebert, king of the West-Saxons. "Sigebertus rex, in principio secundi anni regni sui, cum incorrigibilis superbiæ et nequitiae esset, congregati sunt proceres et *populus* totius regni, et *provida deliberatione, et unanimi consensu omnium, expulsus est a regno*. Kinewelf vero, juvenis egregius, de regiâ stirpe oriundus, *electus est in regem*." Here we see that the Saxon *people* concurred with the nobility, both in deposing and electing a king, and that it was not done in a tumultuous manner, but *provida deliberatione et unanimi consensu*, words which express a parliamentary deliberation and consent. Henry of Huntington wrote early in the reign of Henry the Second, when the memory of the Saxon customs could not be worn out in England, and certainly took this part of his history from some more ancient chronicle. The words are also transcribed by Roger de Hoveden, in his Annals, without any correction.

Sir H. Spelman says, "it seemeth by those synods that were holden in the times of the Saxon kings, and by some after the conquest, that *great numbers of the common people flockt thither*." For it is said in ann. 1021, "*cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa*." And ann. 1126, "*innumeraque cleri et populi multitudine*:" and so likewise in ann. 1138, and other *synods* and *councils*. By what order or limitation this *innumera populi multitudo* came to these assemblies appeareth not." (See Spelm. of Parliaments, p. 64.)

Lib. iii. f. 56.

William of Malmſbury, in a passage I have cited before, relates an answer sent by Harold to the duke of Normandy's charge of his having broken the oath, by which he had promised to aid that prince in his pretensions to England. The words are these: "De regno addebat præsumptuosum fuisse, quod *absque generali senatus et populi conventu et edicto* alienam illi hæreditatem juraverit." This is a plain declaration, that, by the Saxon constitution established in England, *the people*, as well as the nobles, had a right to be called to *the general assembly*, upon affairs of great moment, and to join in the *edicts* made there; so that, without *their consent*, the succession to the crown could not be disposed of. It is observable, that the historian uses the word *senatus* in the same sense as we find it in the before-cited preamble to the laws of King Ina, for the ordinary assembly of the nobles, which he distinguishes from *the people*, but supposes that the latter ought to be joined to the former, in order to compose the entire legislature and great council of the nation, upon extraordinary occasions. This was agreeable to the custom ascribed by Tacitus to the Germans, from whom they sprung: "*De minoribus*"

“ minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum apud plebem arbitrium est, apud principes pertractentur.”

And I think it apparent, that the same form of government continued in England, during the reigns of all the kings treated of in this work; some clear traces of it remaining till much later times. But, as the feudal system was more favourable to the aristocratical than to the popular power, the *lesser senate* by degrees usurped much of the authority that belonged to the greater; and even in the general assemblies the nobles were so predominant, as to leave the people little power, till the relaxation of that system, the encrease of wealth among the commons, and other changes in the political state of the kingdom, which it would take up too much time to enumerate here, gave more regularity and a better balance to the whole legislature.

We are told by the Book of Ely, that, in Edward the Confessor's reign, the brother of an abbot, though nobly born, could not be reckoned among the nobility of the kingdom, because he had not an estate of forty hides of lands. *“ Quoniam ille quadraginta hidarum dominium minime obtineret, inter procures tunc numerari non potuit:”* and therefore he was refused by a lady, whom he sought in marriage, till his estate was encreased to that magnitude by grants of land from his brother. This passage is remarkable, because it shews that a certain portion, and that a very large one, of landed property *in dominio* was a necessary qualification, under the Anglo-Saxon government, to admit any person to the rank and degree of nobility. Whether this continued under the Normans I find no proof; but it must be observed, that no argument can be justly drawn from hence, that, to be qualified for a place in the Saxon great council, or *witenagemot*, it was requisite to be lord of forty hides of land. Nothing like it is said here, nor does such a notion agree with any accounts that are given us of that assembly in the writings or records of those times. But if the *lesser senate* was composed of none but the *procures*, as there is reason to believe, this passage will be a proof, that, without such an estate or lordship, no person could sit there.

V. Histor.
Eliens. lib. ii.
c. xi.
Gale's Hist.
Brit. Script.
vol. i. p. 513.

P. 286. *For, the property of the commons was so unequal to that of the nobles, and the feudal obligations of the inferior landholders to the lords they held under created such a dependence of the former on the latter, that, although in the idea and scheme of the government, a popular power was mixed with the regal and aristocratical, yet, in reality, the scale of the people was not weighty enough to make a proper counterpoise to either of the other.*

All

NOTES TO THE SECOND BOOK OF

All this must be very evident to any person who reads the history of this kingdom, or looks into its laws. But another reason may be added to account for what appears in many rolls of parliament, long after the period contained in this work, that the commons declined to give their opinion or advice to the crown, in certain matters of state, and submitted their judgement thereupon to the king and his council, or to them and the lords. While the representatives of cities, towns, and boroughs, were chosen only out of persons residing therein, they were, for the most part, people of low degree and condition, whose education and way of life rendered them very unfit to judge of arduous questions concerning foreign affairs, and treaties with foreign states. Accordingly we find, that, in the seventh of King Richard the Second, the commons being much prest to give their opinions on a treaty of peace with France, *before the conclusion thereof*, declared, *they knew not what to say; because in the articles were contained many terms of the civil law which they understood not*; and, in the seventeenth of the same king, they pleaded want of capacity to give their judgement or advice on the articles of a peace, in which were contained the law-terms of *homage lige, souveraineté, et ressort*, for which they referred themselves to what the lords, *knights*, and judges had before agreed upon. Here we see that the *knights of shires* were not supposed to be under the same incapacity as the rest of the commons. It was therefore an alteration very beneficial to the importance of the commons in parliament, when gentlemen of liberal education were admitted to serve for cities, towns, and boroughs. The revival of learning in the sixteenth century, and diffusion of it among the gentry, during the next hundred years, contributed also to fill the house of commons with able and knowing men, who had no need to have recourse to the other house of parliament, or to the king's council, for the explaining of terms of law, or the articles of a treaty with any foreign power. But it will be proper to observe, that even in the earliest times, so far back as we have any rolls of the parliament, all the commons appear to have given their advice with great freedom in matters concerning the internal government and order of the kingdom. What they declined to advise in, upon some occasions, were questions that related to the making of peace or war, as, for instance, in the twenty first and twenty eighth years of King Edward the Third, and sixth, seventh, and seventeenth of Richard the Second. In one of these, namely, the seventh of Richard the Second, they were told by the chancellor, "that he was to shew them certain articles, *wherein, although the king himself might well conclude, yet, for*

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"good

See the Rolls
of those years.

"good will, he would not, without their knowledge and consent." To this they answered, not imprudently, *that it beseemed not them to intermeddle with their counsel therein, and referred it to the king and council.* Certainly there was a great difference between exercising the proper parliamentary power of judging of the articles of a peace concluded, and of calling the ministers to account if they had advised the king ill in the exercise of his prerogative, or authorising them to conclude particular articles by a *previous advice*. But in all these instances it is remarkable, how great a regard was shewn by these kings to their parliaments, even in points which belonged to the royal prerogative! Such a conduct in such a prince as Edward the Third, crowned with victory and with glory above all other monarchs, is an evident indication, that *to govern by parliaments* has been the policy of this kingdom under the wisest and best kings, from the earliest times.

A late author has cited Sir Robert Cotton's Abridgement of the Records in the Tower, to shew that the commons, in those times, *were much below the rank of legislators.* He says, "the king told the commons, that they were only petitioners, that is, *they had not any proper legislative authority.*" But I will give the whole passage as it stands in the book itself, that the reader may judge on what authority this construction is founded. The words are these: "The duke of York, and earl of Northumberland, and others of the blood of the archbishop of Canterbury, pray the king, that the same archbishop might have his recovery against Roger Walden, for sundry wastes and spoils done by the said Roger, in the archbishoprick aforesaid, whereto the king granted, and thanked them for their motion. The commons on the 30th of November pray, *that forasmuch as they were not made privy to the judgement aforesaid, no record be made to charge or to make them parties thereunto*; whereunto the archbishop of Canterbury, by the king's commandment, answered, that the commons were *only petitioners, and that all judgements appertain to the king and to the lords: unless it were in statutes, grants, subsidies, and such like, the which the king would from that time to be observed.*" It is evident, that the *legislative power of the commons*, instead of being *denied*, is expressly confirmed by this answer. They are truly told, that the power of *judicature* appertains not to them, but to the king and the lords; and this was the question to which their prayer related: but in *statutes* they were to judge, as well as in grants, subsidies, &c. Certainly their being *petitioners* was no argument of their not being *legislators*: since the course of proceedings then was, that their *petitions*, if assented to by the lords

and

VOL. IV. Q

See Hume's
Hist. of Eng-
land, p. 91.
vol. ii. note.

See Cotton's
Abridgement
of the Records
in the Tower,
p. 392.
1 Hen. IV.

and the king, should be turned into *statutes*, as all the old records of parliament unquestionably shew.

P. 286, 287. *The execution of all laws was entrusted to the king, and none could be made, repealed, or altered, without his assent.*

V. Parliam.
Hist. vol. i.
p. 46.

This has been always the royal prerogative in this kingdom: but *the dispensing with laws* began no earlier than the reign of Henry the Third, by an insertion of the clause of *non obstante* into grants and patents, after the example of the papal power. Matthew Paris calls this *detestabilis adjectio*, and what the king's judges at that time thought of it appears from this passage in the same contemporary historian, "*Quod cum com-
" perisset quidam vir discretus, tunc justiciarius, Rogerus de Thurkeby,
" ab alto ducens suspiria de prædictæ adjectionis appositione, Heu heu,
" hos ut quid dies expectavimus? Ecce jam civilis curia exemplo eccle-
" siasticæ coinquinatur, et à sulphureo fonte intoxicatur.*" The parliament likewise complained, *that the church and kingdom suffered infinitely by reason of the clause of non obstante, which weakened and enervated all oaths, ancient customs, written laws, grants, statutes, and privileges.* When King Richard the Second said (as he is charged to have done in one of the articles exhibited against him in parliament), *that his laws were in his mouth, or in his breast; and that he himself alone could make and change the laws of his kingdom,* he totally departed from all the notions of the ancient constitution, and by acting upon such principles, infused into him by *foreigners*, he dissolved the bonds of allegiance, and *deposed himself.*

See Fortescue
on absolute
and limited
monarchy,
c. viii.

During the violence of the civil wars between the two houses of York and Lancaster, and the frequent revolutions that happened in the government, the whole frame of the constitution was shaken and injured: but how strongly the fundamental notions of liberty were still prevalent in the breasts of honest and knowing men, appears from the admirable treatise of Fortescue on absolute and limited monarchy. He, who had been raised to the highest offices of the law under Henry the Sixth, was not afraid to affirm under Edward the Fourth, with the same freedom as in another part of his writings he had spoken to his royal pupil, the son of Henry the Sixth, that "*rex datur propter regnum, et non regnum
" propter regem. Wherefore all that he doth ought to be referred to his
" kingdom. For though his estate be the highest estate temporal upon earth,
" yet it is an office in the which he ministreth in his realm defence and justice.
" And therefore he may say of himself, as the pope saith of himself and of the
" church, in that he writeth servus servorum Dei.*" This author also founds the original of our government on a number of people *incorporating*

corporating and uniting themselves into a realm under one head, or king; C. ii. says, "they ordained the same realm to be ruled by such laws as they would *all assent to;*" which he affirms to be the only *political government, and absolute monarchy to be mere tyranny.* Such were the notions of our ancestors, in the reign of Edward the Fourth. Nor does Bracton, or Glanville, speak a different language. But, on the other hand, they had no idea of degrading our kings into mere *doges of Venice*, divested of all royal power. And some of our over-zealous whigs would do well to consider, that, by thus lowering the monarchical part of our government, they would as much destroy the symmetry and strength of the whole, as those who seek to raise it higher than the just proportions of a mixed and limited monarchy will admit. Even allowing, what I think can never be allowed, that a republick in itself is a better form of government for a great and opulent country, than a mixed and limited monarchy, it does not follow from thence (as these gentlemen seem to believe), that by bringing the latter nearer to the former they shall make the latter more perfect. For the perfection of it consists in the equal poise of the three constituent parts. Whether that poise be destroyed by throwing too much weight on the side of the king, or of the nobility, or of the people, the mischief is the same.

P. 288. *The wealth of the crown, in the times of which I write, was a great support of it's power.*

Ordericus Vitalis, a contemporary historian, says, that out of the settled revenues of England one thousand and sixty pounds of sterling money, thirty shillings, and three farthings, were reported to be paid every day to William the First, besides the gifts, fines, or amercements, and many other articles, which continually encreased the royal treasure.

"*Ipsi vero regi (ut fertur) mille et sexaginta libræ sterlingensis monetæ, L. iv. p. 523.*
solidique triginta, et tres oboli ex justis redditibus Angliæ per singulos apud Duches.
dies redduntur, exceptis muneribus regiis, et reatum redemptionibus,
aliisque multiplicibus negociis quæ regis ærarium quotidie adaugent."

It is observable, that the historian does not give us this account upon his own knowledge, but upon report (*ut fertur*). Yet one would suppose, that his information was very particular, as he mentions even the farthings. And the way in which he counts, viz. one thousand and sixty pounds, and thirty shillings, instead of one thousand and sixty one pounds, ten shillings, is still used in the Exchequer. Yet the sum is so great as justly to occasion a doubt: for, the pounds here mentioned being pounds *in weight*, which contained in them as much silver as three of our

our present pounds sterling; and the shillings not being coins of that denomination, but signifying the twentieth part of a pound weight of silver, which makes one of them equivalent to three of our shillings; this receipt amounts to three thousand, one hundred, and eighty four pounds, ten shillings of our money, not reckoning the farthings. Multiply this by 365, the produce will be 1,073,985 of annual income; which being also multiplied by five (the lowest computation of the value of silver in those days beyond the present) the sum produced by it will be 5,369,925, exclusive of all the casual profits of the crown, which in those days were very high.

Though William Rufus was very lavish in his gifts and expences, it does not appear that he alienated any part of the ancient inheritance of the crown. For no resumption was made of his grants by his successor, nor any complaint of the crown's being deprived of it's patrimony: but, on the contrary, that prince's opulence is noted by all the contemporary historians. A modern historian affirms indeed, that William Rufus, about the latter end of his reign, *resumed his own grants*; but no proof of this is found in the contemporary writers. William of Malmfbury says, that when he had spent all the treasures of his father, he made up his losses by rapines. *Itaque, quum defecisset quod daret, inops et exhaustus, ad rapinas convertit animum.* Upon the whole there appears no good reason to believe, that the estate of the crown was much diminished before the reign of King Stephen, all whose grants, excepting those he had made to the church, were resumed by Henry the Second. It appears from a letter to the pope from the English parliament, in the reign of Henry the Third, that the clear revenue of the kingdom was then below sixty thousand marks *per ann.* The words are these: "Italici percipientes in Angliâ sexaginta millia marcarum, et eo amplius annuatim (aliis perceptionibus diversis exceptis) *plus emolumentum meri redditus de regno reportant quam ipse rex, qui est tutor ecclesiæ et regni gubernacula moderatur.*" The historian says in another place, "Et inventa est summa reddituum eorum annuatim sexaginta millia marcarum; *ad quam summam non attingit redditus annuus totius regni Angliæ.*" But in both these places is meant not the king's private patrimony, or landed estate, but the publick revenue of the kingdom, which is often distinguished from the other in our ancient records.

In a manuscript treatise of Giraldus Cambrensis, *De institutione regis*, it is said, that the annual *fiscal* revenues amounted, in the time of Edward the Confessor, to just the same sum. "Angliæ regum Anglorum tempore, et penultimi Edwardi Westmonasteriensis diebus, *annui fiscales redditus,*

Daniel, p. 44.

L. iv. p. 69.
de W. II.

V. M. Paris
Hist. Angliæ,
p. 666. sect.
30. sub ann.
1245. 1 edit.

P. 658. sect.
50.

V. Cotton.
Librar. Julius,
B. xiii.

“*redditus, sicut Rotulo Wintoniensi reperiuntur, ad sexaginta millia mar-
 “carum summam implebant.*” By the annual *fiscal* revenues I understand
 the ancient inheritance of the crown: for Bracton says, “*Est res quasi* L. ii. c. 5.
 “*sacra res fiscalis, quæ dari non potest, nec vendi, nec ad alium trans-
 “ferri à principe vel a rege regnante.*” But little regard is due to this
 evidence of Giraldus: for immediately afterwards he says, that in Henry
 the Second’s time, by the continual grants made to soldiers, both from that
 prince and from Stephen, and by the wars between them, and afterwards
 with France, these *fiscal* revenues were brought down to *twelve thousand
 marks*: but he forgets that all the grants made by Stephen, or Matilda,
 except these to the clergy, were resumed by Henry the Second at the
 beginning of his reign; and no other author has said, that this prince,
 for the maintenance of his wars against France, ever alienated any part of
 the patrimony of the crown.

Ibid. It is therefore evident, that a vast share of the lands of England was
 possessed by Henry the Second, which was a constant support to the royal
 dignity, independent of all taxes or impositions on his subjects, and which
 was considered as a sacred and inalienable patrimony, transmitted to him
 from his ancestors, the ancient kings of England; &c.

In one of the articles exhibited in parliament against King Richard
 the Second it is said, “that whereas the king of England by *the revenue*
 “*of his kingdom and the patrimony belonging to his crown*, is able to live
 “honourably (*bonnetement*) without the oppression of his people, as
 “long as the kingdom is not burdened with the charge of wars; yet the
 “said king, in a manner for his whole time, during the truces between
 “the kingdom of England and it’s adversaries, *hath not only given away*
 “*a great, yea indeed the greatest part of his said patrimony, and this to*
 “*unworthy persons, but also hath further imposed on his subjects so many*
 “*burdens of monies granted, as it were every year of his reign, that*
 “thereby he hath extreamly, and too excessively oppressed his people,
 “to the impoverishment of his kingdom, *not converting the sums so levied*
 “*to the advantage and profit of the realm of England*, but prodigally
 “squandering it away for the ostentation of his name, and in pomp and
 “vain-glory, whilst great sums of money are owing in his kingdom for the
 “*victuals of his household, and other things bought*, though he hath
 “abounded with riches and treasures more than any of his progenitors.”

In this remarkable article is very clearly set forth the whole policy of
 our ancestors, with regard to the different provisions they made for the
 crown. It’s support in time of peace was the patrimony belonging to it
 and

and the revenue of the kingdom. But in war they supposed it necessary, that the extraordinary charges should be supplied by grants from parliament. The burthening the people with such grants, or other impositions, in time of peace, the misapplying them to vain-glory, while the charges of the household were unpaid, and the giving away the ancient patrimony, intended for the maintenance of those charges and of the honour and dignity of the crown, are considered by them as offences against the duty of a king.

Chief Justice
Fortescue.

There is also a passage in the treatise of Lord Fortescue on absolute and limited monarchy, which is very pertinent to this subject. For the greater ease of the reader, I shall give it in modern English and spelling.

"The king, our sovereign Lord, had, at times, since he reigned over us, provision in lordships, lands, tenements, and rents, near to the value of the fifth part of his realm, exclusive of the possessions of the church; by which provision, if it had constantly abided in his hands, he had been more mighty in good revenues than either of the said two kings (viz. the sultan of Egypt and the king of France), or any king that now reigns in Christendom. But this was not possible: for to some part thereof the heirs of them that sometime owned it are restored; some by reason of entails; some by reason of other titles, which the king has considered, and thought them good and reasonable. And some part of the same provision his good grace has given to such as have served him so signally, that, as their renown will be eternal, so it befitted the king's magnificence to make their rewards everlasting to their heirs; for his honour and their perpetual memory. And also the king has given part of the said provision to his most honourable brethren, who not only have served him in the manner aforesaid, but are so near in blood to his highness, that it befitted not his magnificence to have done otherwise."

From hence it appears, that in the reign of Edward the Fourth, when this treatise was written, the wealth arising to the crown from its landed estate and casual profits, exclusive of subsidies and grants by parliament, was sometimes equal to one fifth of the lay property of the kingdom. But that many of these profits were only temporary, and could not, from the nature of them, be retained by the king. On this I would observe, that, in some periods of the reign of Edward the Fourth, the estate of the crown must have been greatly increased by the forfeitures of the Lancastrian nobles, and by the escheats that must have fallen into the hands of the king upon the extinction of heirs male in many noble families of his own party, during the bloody civil wars, with which the realm was then infested. Of the forfeitures a great part, before the

writing

writing of this treatise, had been granted away by the king to those of his own adherents who had done him good service. And we see that Fortescue thought such grants not illegal nor improper. But of that great lawyer's opinion and advice on the subject of the royal revenue I shall have occasion to say more in a subsequent note. I will only add here, that in another chapter he says, "*it was undoubted that the king* C. viii. "*had a sufficient provision for his ordinary charges.*"

P. 289. *These inquisitions, or verdicts, were first methodised in the country, and afterwards sent up to the king's Exchequer.*

In the archives of the church of Exeter are contained the returns for the counties of Wilts, Dorset, Somerset, Devon, and Cornwall, compiled from the original verdicts given in by the juries to the commissioners appointed for the making of that survey. I have been favoured with the sight of some very curious observations made on these manuscripts, and on the lesser and greater Domesday-books, by the learned and ingenious Dr. Milles, dean of Exeter, which, when published, will give more light and instruction on this subject, than the world has yet received from any other writer.

The Book of Ely, from which I have taken the account of the manner in which the inquisitions were made, consists of two parts, the first containing the possessions of the church of Ely extracted from the original verdicts, which verdicts for fifteen out of the seventeen hundreds of Cambridgeshire are contained in the second part.

P. 292. *The greater escheats were let at farm, or committed to the custody of persons appointed by the king, to whom they accounted for the profits.*

Mr. Madox says, of these escheats, "that, after they had been long Hist. of the Excheq. c. x. vested in the crown, they were hardly to be distinguished from the king's "*ancient demesne.*" But in this there seems to be some inaccuracy. For it must always have been easy to distinguish escheated baronies, and estates held by knight-service, from the king's ancient demesne; because all tenants in *that demesne* held by socage. And Mr. Madox himself says, in another part of his works, that a manor, *which was part of the ancient and* V. Baroniam, l. i. c. i. p. 11. *original inheritance of the crown,* could not be called *an honour*, because it *never was a barony, or in the seisin of an earl or baron.* This must therefore have prevented any confusion in the accounts of *the ancient demesne lands, and of any honours or baronies escheated to the crown.* But it was necessary to distinguish between honours or baronies held originally of the crown, and those devolved to it by escheat; because, in the latter case,

case, the tenants, who before had held of the baron, became the tenants of the king, *non sicut de corona*, but in the same manner as they had answered for their services to the baron. Which distinction may have been lost when they had been long escheated, and retained by the king, before the escheatry was formed, but, I think, not afterwards.

P. 295. *And therefore when writers say, that the lands of the crown were inalienable, it must be understood only of those in ancient demesne, not of these incidental or casual possessions.*

V. Rot. Parl.
6 Hen. IV.
n. 14.

This difference is well attended to and expressed by the commons in their petition to King Henry the Fourth for a resumption of grants in the sixth year of his reign. "Forasmuch as the crown of the realm of England has suffered great disparagement and diminution (*est grantement emblemissée et aneantissée*) by great and excessive grants, made to diverse persons, as well spiritual as temporal, of lands, tenements, feefarms, franchises, liberties, and other possessions, be it enacted in this present parliament, for the profit of the king and of the realm, and for the support of the commons, that all castles, manors, lordships, lands, tenements, fees, and advowsons, feefarms, annuities, franchises, liberties, and customs, *which were members and parcels of the ancient inheritance of the crown* in the fortieth year of the reign of King Edward grandfather of our Lord the present king, and from that time, whether given for life, or for a term of years in fee simple or in fee tail, or conditionally, or to the spiritual lords for themselves and their successors; *except wardships, marriages, and escheats*, and what has been assigned to the queen in dower, should be entirely resumed, recovered, and seised into the hands of our Lord the king, *and rejoined to the crown, to remain perpetually annexed to it, without being ever for the future, by any means or device whatsoever, separated from it*, saving the grants made at, or after, the term beforementioned, of any parcels of the said ancient inheritance of the crown, *by special charter confirmed by the authority of parliament.*"

Here the distinction between the ancient inheritance of the crown, and escheats or casual profits, is evidently marked out: and as for the confirmation given to grants *out of the ancient inheritance* made in or before the fortieth of Edward the Third, it was necessary for the avoiding of the inconvenience and injustice that must always attend *the looking back too far* in acts of resumption. Nevertheless the desire of giving ease to the people induced the parliament to advise, that during the continuance of heavy wars, or at times when the crown was greatly oppressed with debts,

debts, all such casual profits might remain in the hands of the king, for his own use and benefit. Thus, in the fifth year of Edward the Second, an ordinance was made, that, *to pay the debts of the king, and raise up his state, and maintain it more honourably*, no grant of land, or rent, or franchise, or escheat, or of wardship or marriage, or of bailiwick, should be made &c. *till his state should be raised up &c.* And thus, in the first year of Richard the Second, the commons prayed for an enquiry into the grants of castles, towns, lands, tenements, bailiwicks, wardships, marriages, escheats, and reliefs, made by Edward the Third, to see whether they had been worthily or unworthily bestowed; that where they had been properly given, they might be confirmed, but where the king had been deceived, they might be resumed, and not granted again to the same persons, or any others, *till his debts were paid, and a better provision made for the princes his sons.* In the fifth of the same king the commons again petitioned, that no grant should be made of any land, rent, marriage, or any kind of escheat to any person whatsoever, *till the king should be out of debt, and out of such charges of war as lay upon him at that time.*

V. Rot. Ord.
5 Edw. II.
n. 3.

V. Rot. Parl.
1 R. II. n. 48.

V. Rot. Parl.
5 R. II. p. 1.
n. 74.

But the king only promising, that he would make no new grants without the consent of the lords and others of his council, they renewed their petition the next year, that all kinds of wardships, marriages, reliefs, escheats, forfeitures, and all other profits, might be kept for the king's wars and the defence of his kingdom, in support and aid of his poor commons, and not otherwise bestowed. To which he also returned no other answer, than that he was willing and desirous to proceed in this matter by the advice of the lords of his kingdom, as it should seem to him most conducive to his honour and profit. Yet in his ninth year he consented to the desire of his parliament, that all his revenues should be laid up for one whole year without any diminution thereof by gift or grant. And in his eleventh year the commons prayed, that all forfeitures lately incurred of lordships, lands, &c. and all escheats and other profits, which had fallen, or should fall, into the hands of the king, by any means whatsoever, might remain in them during the wars, to discharge his debts, and in aid of the maintenance of his state, and also for the ease and relief of the poor commons of his realm: which he granted with some restrictions. So likewise, in the eleventh of King Henry the Fourth, the commons prayed, that no grant be made of any hereditaments or other profits of the crown, except offices and bailiwicks, *till all the debts then due from the king to his subjects should be entirely discharged, and with enough remaining in the hands of the king and his royal successors for the reasonable sup-*

V. Rot. Parl.
6 R. II. n. 42.

V. Rot. Parl.
9 R. II. n. 42.

V. Rot. Parl.
11 Hen. IV.
n. 23.

port and maintenance of his household, chamber, and wardrobe: which the king assented to with some reservations.

It would be tedious to give more instances of the same nature; but I will add, that when any feignory had been annexed to the crown by act of parliament, the parliament considered the lands belonging thereunto as being equally inalienable with the ancient inheritance of the crown; and, no doubt, with good reason. It must also be noted, that on the ancient demesnes of the crown were built many royal castles and fortresses held by knight-service or castle-guard, which, when alienated by our kings, were very properly and justly resumed; as we find to have been done, with the advice and consent of parliament, by Henry the Second. But, if *all escheats, forfeitures, and other casual profits*, had been likewise deemed inalienable, the crown, perpetually receiving, and rendering nothing back, would soon have drawn to itself, by means of these incidents, all the lands and wealth of the kingdom. Nevertheless, in the treatise of Lord Chief Justice Fortescue, cited before in these notes, King Edward the Fourth is advised, that, in order to answer extraordinary and sudden charges, for which he could not have the ready assistance of his parliament, a perpetual provision should be made, by a general resumption of all the lands he had granted away (except those given to his brothers, and some others who had signally served him); which resumption should be authorised by act of parliament, and at the same time a great subsidy should be granted to the king for the rewarding in money those grantees, who, by the opinion of a council, to be established for that purpose, should be found to have deserved it. All the lands thus redeemed he proposed to annex for ever to the crown, so as not to be alienated without consent of parliament: to support which advice he gives many weighty arguments, such as the mischiefs that must ensue to a realm from the poverty of a king, which he most judiciously sets forth; and the evils that would follow his relieving his necessity by impoverishing and oppressing the commons. He likewise displays very wisely the great peril to the state, if any nobleman has more to spend than the king; for which reason he intimates, that the king, in disposing of his noble wards in marriage, should prudently take care, that too great additions might not be made to their wealth; and that he should encrease his own by the casualties of escheats and forfeitures, and also by purchasing land from such of his nobles as were desirous to sell, which none could do without his licence. On all this I would observe, that every good purpose proposed by this able lawyer and wise statesman is much better answered by our present method of providing for the maintenance of the honour

See Fortescue
on Absolute
and limited
monarchy.

Ibid. c. xi.
p. 84. c. xiv.
c. xix.

C. v.

C. iii. iv. x.

C. x. p. 76,
77.

honour and dignity of the crown, in settling on the king, for his life, a clear annuity, of such value, as may be sufficient for all charges both ordinary and extraordinary, except those which, from the nature of them, ought, in good policy, to be reserved for the consideration of parliament. Thus no danger to the state can be likely to arise from *the poverty of the king*, nor, on the other side, from the balance of power being hurt by too great a weight of *landed property* in the scale of the crown, a danger to which it does not seem that our ancestors were sufficiently attentive. And the alterations of our law with regard to the power of alienating lands, with other changes that have happened in the state of our nobility since Fortescue wrote, have taken away that apprehension he so justly conceived of any subjects being made, by the greatness of their estates, as powerful as their sovereign. The danger now appears to lie the other way, namely, that the poverty of some of our nobles may, at certain times, make them too dependent on the king; which, while baronies were territorial, could not possibly happen; as there was always, under that constitution of the peerage, a sufficient estate annexed to every *honour*, for the maintenance of the baron, according to his rank, without his having recourse to the bounty of the crown.

P. 296, 297. *But the highest payments of this nature which I meet with in the rolls, till after the thirty first year of Henry the Third, were made to that king, by John earl of Lincoln, and by Simon de Montfort; the former of these having given three thousand marks, to have the marriage of Richard de Clare, for the benefit of Matilda, his eldest daughter, and the latter ten thousand to have the custody of the lands and heir of Gilbert de Unfranville until the heir's full age, with the heir's marriage, and with adowsons of churches, knights-fees, and other pertinencies and escheats.*

One still greater payment, being the double of the highest above-mentioned, had escaped my observation in another part of Mr. Madox's History of the Exchequer, p. 322. He shews from the great roll of the second of Henry the Third, that Geoffry de Mandeville gave twenty thousand marks, that he might have to wife Isabel countess of Glocester, with all her lands and knights-fees, a most enormous sum, considering the value of silver in those days!

P. 301. *I find no account of what was taken by Henry the Second for another feudal due, viz. on the making his eldest son a knight.*

Mr. Selden takes notice, in his Book on Titles of Honour, that with respect to our kings this aid continued arbitrary till the statute of the

See part i.
cap. v. sect.
37.

twenty fifth of Edward III, which put the king in the like condition with ordinary lords, who, by a former statute of the third of Edw. I, had been restrained from taking more on this account than twenty shillings from every tenant of a whole knights-fee, and the same from every one who held lands in socage of the yearly value of twenty pounds, and so *pro rata*; but that none of it should be levied until the son were of the age of fifteen years, which is called, by Breton, *l'age pur ordre de cbivaler prendre*.

P. 303. *And both these laws seem to refer to a preceding statute, now lost, by which the feudal policy of the Normans had been established in England.*

See Wright's
Tenures,
p. 65 to 74.

The words of reference, in one of these statutes, namely, the fifty fifth, are as follows: "*Prout statutum est eis, et illis a nobis datum et concessum jure hæreditario in perpetuum per commune consilium totius regni nostri prædicti*;" and in the other (the fifty eighth), "*sicut illis statuimus per commune consilium totius regni nostri prædicti, et illis dedimus et concessimus in feodo jure hæreditario*." Sir H. Spelman, speaking of the latter of these laws, says, "here the word *statuimus* sheweth, that it was the Conqueror's institution, and *concessimus in feodo jure hæreditario* implyeth, that feuds were not hereditary before *this grant*." By *this grant*, I presume he does not mean *this statute*, but the grant referred to therein. I cannot agree with the learned author of the *Introduction to the Law of Tenures*, in thinking that both these laws refer to the fifty second of that king, which runs in these words: "*Statuimus etiam ut omnes liberi homines fædere et sacramento affirmant, quod intra et extra universum regnum Angliæ (quod olim vocabatur regnum Britannicæ) Willielmo regi domino suo fideles esse volunt, terras et honores illius omni fidelitate ubique servare cum eo, et contra inimicos et alienigenas defendere*." On this law I have before made some observations, p. 181. book ii. vol. ii.—The purport of it seems to be, the imposing of an oath of confederacy, or association, for the defence of the king, and of all his territories and dignities both in and out of Great Britain. But it does not appear to give any thing; nor is there the least mention in it of the great alteration made in the tenures of lands and the policy of the realm by this king and his parliament, in rendering the estates of the English *hereditary fiefs*, to all perpetuity, which is expressly taken notice of in the two other statutes, and called a *grant* or *concession*. The words of it are likewise very different from those of the usual oath of fealty. I am therefore obliged to differ with the learned writer abovementioned in his opinion, that

that this law introduced into England the Norman feudal tenures, and is referred to in the fifty fifth and fifty eighth laws before-recited; nor can I agree with him, that the *liberi homines* mentioned in those laws were no others but the tenants in chief of the king.

Ibid. Whether this difference arose from any other statute made by William the First, after the two abovementioned, or from a narrow and unfavourable construction thereof, by a subsequent usage, I cannot say.

There is much obscurity in this matter: but by the *Inquisitio Gbeldi*, which is found among the Exeter manuscripts mentioned in a former note on Domesday-book, and no where else in the kingdom (being an account of the money levied for danegelt in the five western counties at the time when the survey was made by William the Conqueror) it appears, that among the demesne lands exempted from that tax were the lands of all the *servientes regis*, under which description are contained, not only those who held of him by knights-service, but *præpositi*, *camerarii*, *hostiarii*, *marescalli*, *coci*, *focarii*, *carpentarii*, *venatores*, *parcarii*.

In four of the western counties the exempted demesne amounted to one third, and in the fifth, viz. Somersetshire, to one fourth of the whole land.

P. 304. However this may have been, it is declared, most explicitly, by King Edward the First, in his confirmation of the charters, that the aids, free gifts, and other impositions, irregularly taken or levied by him or his ministers, before that time, for his wars or other necessities, should not be drawn into precedent because they might be found recorded on the rolls: and he therein grants to the nobility and commonalty of the realm, that, for the future, he would not, for any necessity whatsoever, take any such aids or impositions, without the common assent of the whole kingdom, and to the common benefit thereof; with a reserve of the ancient aids and impositions due by custom.

Nothing can be more express than this declaration. Nevertheless, in the fifty first of Edward the Third, upon the parliament's renewing their claim to the king, that in time to come the prelates, earls, barons, commons, citizens, and burghesses of his realm of England may not henceforth be charged, molested, nor grieved to make any common aid, or sustain any charge, unless it be by common assent of the prelates, dukes, lords, and barons, and other people of the commons of his realm of England, and that in full parliament; his answer was, "that he is not at all willing to do it, without great necessity, and for the defence of the realm, and where he may do

See Cotton's
Abridgement
of the Records
in the Tower,
P. 152.
51 Edw. III.

"*it with reason.*" These savings, the last especially, seem to set the whole loose. On this I would observe, that, although it was dangerous to allow any latitude of this nature in the raising of money without consent of parliament, yet there was also a danger, which might attend the restraint in cases of real and urgent necessity, or even where advantages of importance might be lost by waiting till the time when the parliament should be sitting, and the supply could be granted there in the usual forms. This seems to have been one cause of the two frequent violations of this great and acknowledged right of parliament, as well as a specious pretence for them on many occasions; especially under the Tudors, and the two first kings of the Stewart family: but the difficulty has been obviated by the expedient recurred to in later times of making provision for such contingences by *votes of credit* in time of war, and even, on some occasions, in time of peace, when there appears to be causes for apprehending danger, or much inconvenience to the publick, from tying the government up by the usual restrictions. But great care ought to be taken, that this trust, which the parliament reposes in the government, should be *limited as to the sum*, and given under the obligation of being *subject to account*. Nor ought such votes to be ever past *in time of peace*, without a most apparent reason, upon some clear prospect of great benefit from enabling the government to make subsidiary treaties with foreign powers during the recess of parliament, or other such weighty motives. Under these cautions, the use of *votes of credit and confidence* is a means of delivering that great security of our property and freedom, the ancient claim of our parliaments *that no aids or taxes shall be levied without their assent*, from those objections of inconvenience and danger to the state, which many writers on the side of absolute monarchy have formerly brought against it with some shew of reason.

See Barclay
and others.

I cannot better end this note on this very important subject, than by transcribing some passages from that excellent treatise of Lord Chief Justice Fortescue on Absolute and limited monarchy, which, next to the laws recited in the Bill of Rights, is one of the noblest monuments we have of the liberties enjoyed by our ancestors. In his third chapter he says, that "on account of the great wars which the English made in France the three estates durst not assemble. And then, for that cause, and for great necessity which the French king had of goods for the defence of his kingdom, he took upon him to set *tailles* and other impositions upon the commons *without the assent of the three estates*; but yet he would not set any such charges, nor has set, upon the nobles, for fear of rebellion. And because the commons, though they
"grudged,

“grudged, have not rebelled, or be hardy to rebel, the French kings
 “have yearly since set such charge upon them, and so augmented the
 “same charges, *that the said commons be so impoverished and destroyed as*
 “*they can scarce live.* They drink water, they eat apples, with bread
 “very brown made of rye. They eat no flesh, but very rarely, a little
 “bacon, or of the entrails or heads of beasts slain for the nobles and
 “merchants of the land. They wear no woollen, but a poor coat un-
 “der their outermost garment made of broad canvass, and call it a frock.
 “Their hose are of like canvass, and reach not above their knee;
 “wherefore they be gartered, and their thighs bare. They can live no
 “otherwise: for some of them, that were wont to pay to their lords for
 “their tenements, which they take by the year, a crown of gold, pay
 “now to the king, over and above that crown, five crowns. From
 “whence they are prest by necessity so to watch, labour, and grub in the
 “ground for their sustenance, that their nature is much wasted, and the
 “kind of them brought to nought. They go crooked, and are feeble,
 “not able to fight nor to defend the realm; nor have they money to
 “buy them weapons withall: but verily *they live in the most extreme po-*
 “*verty and misery*; and yet they dwell in one of the most fertile realms
 “of the world: through which it happens that the French king has
 “not men of his own realm able to defend it, except his nobles, who en-
 “dure no such impositions, and have therefore strong bodies. By which
 “cause the said king is compelled to make his armies and retainers for
 “the defence of his land, *of strangers*, as Scots, Spaniards, Arragonese,
 “Germans, and other nations; or else all his enemies might over-run him.
 “For he hath no defence of his own, except his castles and fortresses.
 “*Lo! this is the fruit of his Jus regale.* If the realm of England,
 “which is an island, *and therefore may not easily get succours of other lands,*
 “were ruled under *such a law*, and under *such a prince*, it would be then
 “*a prey to all other nations, that would conquer, rob, and devour it.*”

It will not be necessary to enter here into any disquisition, whether the
 time *when*, and the manner *how*, the kings of France obtained an abso-
 lute monarchy, called here *Jus regale*, with a power of taxing their peo-
 ple *without the assent of the three estates*, be rightly fixed by this writer.
 It is sufficient to observe, that, as he had lived many years in France,
 where he took refuge with the son of King Henry the Sixth, his pupil,
 we cannot doubt the truth of the description he gives of the poverty and
 misery of the people there from such arbitrary impositions. And with
 relation to the peasants and tillers of the soil much of it still continues. He
 thus proceeds in his comparison of the kingdoms of England and France,

" But, blessed be God, *this land is ruled under a better law, and therefore*
 " *the people thereof be not in such penury, nor thereby hurt in their persons ;*
 " *but they be wealthy and have all things necessary to the sustenance of na-*
 " *ture. Wherefore they be mighty, and able to resist the adversaries of the*
 " *realm, and to beat other realms that do, or would do, them wrong.*
 " *Lo ! this is the fruit of Jus politicum et regale, under which we live.*
 " Somewhat now I have shewn you of the fruits of both laws, *ut ex*
 " *fructibus eorum cognoscatis eos.*" Let me now ask, is not this a most re-
 markable testimony of the freedom of the English government, and the
 easy state of the commonalty, under our ancient constitution, even after
 the great disturbance which the utmost rage of civil war had occasioned
 in the kingdom ? Will it be said, against an evidence so clear and express,
 that, till within this last century, the charters granted by our kings were
 of no real value or benefit to the people ? Our liberty has certainly been
 confirmed, improved, and strengthened, and a better form has been given
 to it, during that period and part of the preceding century ; but it stands
 on the old foundations ; and a great portion of its vigour is drawn from
 that root, which made it flourish in the times that Fortescue here de-
 scribes ; a root fixed in the English soil, and carefully cultivated, many
 ages before. I will go on to recite some other remarkable passages from
 this admirable work, which I wish were read and got by heart by every
 young English gentleman, before he travels into France. The author
 says, in his 4th chapter, " Seeing that our king reigneth over us by laws
 " more favourable and good to us, than be the laws by which the French
 " king ruleth his people, it is reason we be to him more good and more
 " profitable than be the subjects of the French king unto him, which it
 " would seem that we be not, *considering that his subjects yield to him more*
 " *in one year, than we do to our sovereign Lord in two years, although they*
 " *do it against their wills.*"

I have observed in another place that this defect of revenue has been
 since supplied to the crown by the settlement of a proper and ample *civil*
list on our kings, for the maintenance of the honour and dignity of the
 crown ; and by annual grants for publick services so bountifully given,
 according to the exigences of government, that no absolute monarchy was
 ever supplied by its subjects in proportion to their numbers, with an equal
 liberality.

The same author goes on thus : " Nevertheless, when it is considered,
 " that a king's office consists in two things, one to defend his realm
 " against it's enemies without, another, to defend his people against
 " wrong-doers within, which the French doth not ; *since he oppresseth*
 " *them*

“ *them more himself than would have done all the wrong-doers of the realm,*
 “ *though they had had no king :*

“ And since it is a sin to give no meat, drink, cloathing, or other
 “ alms to them that have need, as shall be declared in the day of doom,
 “ *how much a greater sin is it, to take from the poor man his meat, his*
 “ *drink, his cloathing, and all that he hath need of? Which verily doth*
 “ *the French king to many thousands of his subjects ; as it is openly before*
 “ declared. Which thing, though it be coloured *per jus regale*, yet it
 “ is *tyranny* : wherefore, albeit that the French king’s revenues be,
 “ by such means, much greater, than be the revenues which the king
 “ our sovereign Lord hath of us, yet they be not righteously taken,
 “ and the might of his realm is near destroyed thereby. By which
 “ consideration *I would not that the king’s revenues of this realm were made*
 “ *great by any such means.*

And in his tenth chapter he mentions the impositions taken by the
 duke of Burgundy upon every ox, every sheep, and upon other things
 sold, and also upon every vessel of wine, every barrel of beer, and other
 victuals sold in his dominions ; “ *which (says he) is no little revenue to*
 “ *him yearly ; but yet he doth it maugre the people ; which God forbid*
 “ *that the king our sovereign Lord should do upon his people, without their*
 “ *grants and assents.* Nevertheless, with their assents such manner of
 “ subsidy, if there could not be found a better means of encreasing the
 “ king’s revenue, were not unreasonable. For therein, and in the gabel
 “ of salt, every man shall bear an equal charge. But yet I would not
 “ that such a new custom and charge were put upon the people, in our
 “ sovereign Lord’s days, with which his progenitors charged them never, if
 “ a better and more convenient way could be found.”

I need not observe that such taxes have in some degree been since laid.
 But the chief inference I would draw from these citations is this. If
 the learned judge who wrote thus, concerning the laws and constitution
 of England, under King Edward the Fourth, could have revived in the
 reign of Charles the First, what opinion would he have given upon the
 arbitrary impositions laid by that prince on his people without their grants
 or assents ? Would he have said, *it was the ancient prerogative of the*
crown to raise money in that manner ? Would he have thought it agree-
 able either to policy or to law ? Would he have told that unhappy prince,
 as some of his bishops told him, *that it was the duty of his people to sub-*
mit to such impositions without resistance ; that his *jus regale* was inherent
 in him *jure divino*, and uncontrollable by any human power ? Or
 would he have satisfied his conscience, as Dr. Brady and others tried to

satisfy the consciences of his sons Charles and James, by persuading him that the privileges, on which the commons insisted, had been extorted from King John by rebellious barons, and did not extend to the commons, who in those days *were all slaves?*

Lastly I ask, are we to take our ideas of the rights and liberties of our ancestors from the connected series of their laws, and from the writings of their greatest and most approved lawyers, especially such as treat of government and the constitution of England, or from irregular acts of power, and inconsiderate or corrupt proceedings in parliaments or courts of justice, under particular reigns, and at particular times?

P. 308. *The religious notions of the times, and laws founded thereupon, forbidding usury to all Christians, and not distinguishing between that and a reasonable interest for money upon loans; without which neither commerce could well be carried on, nor the sudden exigences of the government, or of particular persons, be supplied, the Jews were necessary as money-lenders; &c.*

The Jews understand, that by the law of Moses they are forbidden to lend money *to one another* upon interest; but may practise usury to any height in their dealings with foreigners, without offence against *that law.*

P. 316. *Yet there were some of stone, and of a handsome architecture, according to the taste of those days, &c.*

V. Benedict.
abbat. v. i. p.
197. sub ann.
1177.

The abbot of Peterborough mentions *a stone house (domum lapideam)* of a rich citizen in London. It can therefore hardly be doubted that the houses of the nobility, built in that city or its suburbs, which Fitzstephen speaks of as magnificent, were likewise of stone.

P. 320. *We have a charter of King Henry the Third in the English of that time, which, as it is curious to see how near the language approached to that of the present century, I have given, with a translation of it into modern English, in the Appendix to this book, &c.*

See Camden's
Remaines con-
cerning Britain
p. 24.

Mr. Camden tells us, that in the time of King Henry the Second he finds this *rime* sent from Rome by Pope Adrian, an Englishman, to be taught to the people:

Ure fadyr in heaven rich
Thy name be halyed ever lich:
Thou bring us thy michell blisse

Als

Als his in heaven y doe
 Ever in Yearth been it also.
 That holy bread that lasteth ay
 Thou send it ous this ilke day.
 Forgive ous all that we have don,
 As we forgivet uch other mon :
 Ne let ous fall into no founding
 Ac shield us fro the fowle thing.

Amen.

But this learned author does not say on what authority he supposes, that these verses were as ancient as the time of pope Adrian. They seem to me much more modern, and nearer to the present English than the charter of Henry the Third, which I have given as a specimen of the language in his time.

P. 321. *Indeed those who in that age were best qualified to be authors all wrote in Latin.*

Among these are some poets, of whom by far the most eminent was Joseph of Exeter, called Josephus Iscanus. In his youth, he wrote only some epigrams and love-verses, none of which are preserv'd: but in his riper age his genius took much higher flights, above the pitch of any contemporary poets. For he wrote two epic poems in Latin heroic verse; the first on the subject of the Trojan war, in five books, which he dedicated to Thomas Baldwin archbishop of Canterbury, and of which Leland and Camden have given us some specimens, that seem indeed much more elegant, and nearer the spirit of true Latin poetry, than any other compositions of our countrymen in those times. I will transcribe a few lines, to give my reader a taste of his style and manner. He says to the archbishop his patron, who was going to the holy war,

V. J. Lelandi
 Comus de scr.
 Britan. c. 217.

“ Te sacræ assument acies, divinaque bella.

“ Tunc dignum majore tuba, tunc pectore toto

“ Nitar, et immensum mecum spargere per orbem.

And afterwards,

“ Altera sacræ

“ Tendo fila lyræ; plectro majore canenda

“ Antiochæ me bella vocant: nunc dicere votum est

“ Christicolæ acies, et nostræ signa Sibyllæ.

“ Quæ virtus, quæ dona crucis: nec fundit anhela

“ Hos mihi Cyrrha pedes; animi fidentis hiatum

“ Celsior e cœlo venit impleturus Apollo.

- " Tu quoque, magne pater, nostri fiducia cœpti
 " Altera, et in pelago pandens mihi vela secundo,
 " Hoc tibi ludit opus : succedit serior ætas,
 " Seria succedunt aures meritura pudicas ;
 " Si tuus in nostros candor consenserit ausus,
 " Non metuum culicis stimulos, fucique susurrum.

V. Leland. ut
supra c. 197.
de T. Baldui-
no.

The promise he makes in these verses of another poem on the subject of the crusade, he fulfilled, and published that poem after the death of Baldwin, but in what year is uncertain. Leland only saw a fragment of it, in which the writer takes occasion to praise his native city Exeter, "*tam exquisite* (says Leland) *ut facile credas Musas ipsas, cum profluenti Helicone tota, vati ea concinenti præsentissimas adfuisse.*" It must however be observed, that this author is too apt to be lavish of his praise, and writes always much more as a panegyrist than a critic. Joseph of Exeter lived to a very old age, and made a new edition of his poem *de bello Trojano* in the reign of Henry the Third. The matter of it is taken, not from Homer, but Dares Phrygius, whose fabulous history was much in vogue at that time. From thence Mr. Camden has cited the following verses, to shew the talent of this writer for poetical description :

See Camden's
Remaines, P.
313.

- " Haud procul incumbens intercurrentibus arvis
 " Idæus confurgit apex, vetus incola montis
 " Sylva viret, vernat abies procera, cupressus
 " Flebilis, interpres laurus, vaga pinus, oliva
 " Concilians, cornus venatrix, fraxinus audax,
 " Stat comitis patiens ulmus, nunquamque senescens
 " Cantatrix buxus : paulo proclivius arvum
 " Ebria vitis habet, non dedignata latere
 " Cancricolam poscit Phœbum, vicinus aristas
 " Prægnantes fœcundat ager, non plura Falernus
 " Vina bibit, non tot pascit Campania messes."

But in an edition I have seen of this poem printed at Basil, with Homer's Iliad and Odyssey, the first line runs thus :

- " Haud procul incumbens urbi, mediantibus arvis,
 " Idæus confurgit apex, &c."

To these specimens I will add the description of Ajax Telamon fighting against the Trojans.

- " Parte furens aliâ cognatos impiger hostes
 " Turbabat Telamone fatus, septena coruscans
 " Terga boum : hasta viro quercus jaculabilis uni
 " Unam passa manum : non ferrea futa superbum

Velavere

- " Velavere latus; five has bellare proterva
- " Non tulit ira moras, seu lato pectoris orbe
- " Se totum latuisse ratus, sic sævit inermis
- " Sic premit armatos: maturat fata cadentum
- " Terror, et ignavis mors est vidisse furem."

Though the Latin in these and other parts of this work is not quite pure and grammatical, yet it is more so than in most other verses of that age; and in the spirit of poetry and harmony of numbers it far excels the Philippiad of Guillaume de Breton, a contemporary epic poem.

In a much lower strain, but with great vivacity and facetious good humour, did the jovial bard, Walter de Mapes, archdeacon of Oxford, who may be called the Anacreon of the eleventh century, sing his Leonine rimes in praise of good drinking; a specimen of which I will here transcribe: See Camden's Remaines.

- " Mihi est propositum in tabernâ mori:
- " Vinum sit appositum morientis ori:
- " Ut dicant, cum venerint, angelorum chori,
- " Deus sit propitius huic potatori.
- " Poculis accenditur animi lucerna,
- " Cor imbutum nectare volat ad superna,
- " Mihi sapit dulcius vinum in taberna,
- " Quam quod aquâ miscuit præsulis pincerna.
- " Suum cuique proprium dat natura munus;
- " Ego nunquam potui scribere jejunos:
- " Me jejunos vincere posset puer unus:
- " Sitim et jejunium odi tanquam funus.
- " Tales versus facio quale vinum bibo:
- " Non possum scribere nisi sumpto cibo:
- " Nihil valet penitus quod jejunos scribo
- " Nasonem post calices carmine præibo.
- " Mihi nunquam spiritus prophetiæ datur,
- " Nisi cum fuerit venter bene satur:
- " Cum in arce cerebri Bacchus dominatur,
- " In me Phœbus irruit, ac miranda fatur."

P. 324. But, though much was stolen by this author, he added enough of his own, to give him a considerable rank, in the opinion of Sir H. Saville and Mr. Selden, among the many historians who flourished in the eleventh and twelfth centuries.

Of

Of these historians, besides those mentioned in the text, Gervase of Canterbury and Diceto are frequently referred to in the course of his work. They are large in their account of church affairs, and not useless to a compiler of the history of those times in their accounts of other matters. Brompton's chronicle is in many places a transcript from Gervase and Giraldus Cambrensis; but he has added copies of some records and ancient laws, which are not to be found in those authors, and make his work of some value.

P. 326. *Some of his letters are animated with a spirit of liberty, which would have done honour to a Greek or Roman republican: &c.*

It may be worth while to give the reader a specimen of this spirit from one of his letters to the bishop of Worcester, who was son to the great earl of Gloucester, often mentioned in this work. His words are these: "*Filium alloquor illustris comitis, qui in regum catalogo dignus fuerat numerari, nisi quia magnificæ virtutis titulo meruit, ut, in libertatis culmine constitutus, reges viderit in ordine secundo.*" The sense of which may be thus expressed in an English translation: "I speak to the son of that illustrious Earl, who would have been worthy to be reckoned in the catalogue of kings, if his virtue and magnanimity had not raised him so high, that, *being placed at the head of a free people, and their leader in defending the cause of liberty, he saw kings in a rank below his own.*" V. epist. S. T. C. e cod. Vatican. lib. ii. epist. 96.

P. 333. *He says, the houses, on such occasions, were strewed with flowers, and the jovial company drank wine out of gilded horns, &c.*

Agreeably to this description we are also told by Fitzstephen, that Becket, when he was chancellor, ordered his hall to be strewed every day in the winter with fresh straw or hay, and in summer with rushes or green leaves fresh gathered, that the multitude of knights, which the benches could not contain, might sit on the floor, thus rendered clean and gay, without dirtying their fine garments. "*Jusserat quaque die novo stramine vel feno in hieme, novis scirpis vel frondibus virentibus in æstate, sterni hospitium suum; ut militum multitudinem, quem scamna capere non poterant, area munda et læta reciperet; ne vestes eorum pretiosæ, vel pulchræ eorum camisæ, ex areæ sorde maculam contraherent.*" It may be worth remarking, that still at the coronation of our kings, Westminster-hall is strewed with herbs.

But even in Becket's days this rustic simplicity was mixed with great magnificence in gold and silver plate; for the author above cited goes on

to say, that, "*vasis aureis et argenteis domus ejus renidebat.*" I will add, that I have seen, in the treasury of St. Bertin's church at St. Omers, a silver vessel of that age, the form and workmanship of which are as elegant as any now made.

P. 336. But it appears, that, in the times of Henry the Second, the whole gentry of England, having adopted the fashions of the Normans, were as magnificent in their dress as their fortunes could bear.

Mr. Camden says, that in this age the use of silk made by silk-worms was brought out of Greece into Sicily, and then into other parts of Christendom. He likewise mentions a costly stuff, called in Latin *aurifrisium*, which was worn in England at this time. With regard to the mode of dress the same learned antiquary observes, that king Henry the Second brought in the short mantle, and was therefore surnamed *Court-mantel*. Yet by other proofs it appears, that long flowing gowns, after the fashion of the East, continued to be worn by the nobility and gentry in his time.

See Camden's
Remains, p.
194.

NOTES

N O T E S

TO THE

T H I R D B O O K

O F T H E

Life of King Henry the Second.

PAGE 346. *For this purpose the archbishop had before employed John of Salisbury, to compile a book, chiefly drawn from the writings of Eadmer, a monk contemporary with Anselm, in which, with an account of the merit of that prelate to Rome and the church, several miracles, said to have been done by him during his life, and after his death, were recorded.*

V. Johan. Sarisb. de vitâ Anselm. in Angliâ Sacra, p. 165. Ibid. p. 156.

It is said, in the abovementioned book, that a hare pursued by a pack of dogs having run under the feet of Anselm's horse for protection, he, in compassion to the poor little beast, bid her go off securely, *and by the authority of his word alone restrained the bounds.* We are also told in another place, that being to dine with a monk, who had nothing for his dinner but bread and cheese, he bid him cast his net into a neighbouring river, and assured him he should take a fish big enough to feed the whole company: the monk did so, *and a fish of a wonderful magnitude was instantly caught, to the great astonishment of all present.* There are other stories, if possible, still more ridiculous; but these are sufficient to instruct us what regard is due to that legend, and what absurdities the credulity of those times could swallow. At the same time it must be noted, that the author of this book was one of the most sagacious and learned men of that age: but neither he, nor his patron Becket, nor Pope Alexander himself, was ashamed of any lies, which it was thought would be serviceable to the interest of the church, and do honour to its champions in the opinion of the people.

P. 347. *It would be tedious to enumerate each particular instance, wherein, by a real or pretended zeal for the church, he (Becket) disquieted his fellow-subjects, or offended his sovereign, &c.*

Mr. Carte has observed, in a note to p. 579. of his History of England, vol. i. that a story mentioned by some writers, and quoted from a manuscript History of the Life of Becket, preserved in Gretham College, V. Edward is too absurd to need a serious refutation, as it is founded upon a sup- Grim or Ryme, Mss. Gretham College.
position, that the two shillings an hyde, levied for *danegeld*, was not for the king's use, but was due to the under sheriffs, that held the county courts. Indeed both in that author, and in another Life of Becket, where I find it also mentioned, it appears a most idle and groundless tale, unsupported by all accounts of the revenue in that age. Yet this alone can, with any degree of propriety, be alledged as an instance of Becket's contending for the rights of the people against the crown, because, it is said, he maintained, that his tenants ought not, *de jure*, to pay that money, *as belonging to the king*. In all other respects his contention with the crown was so far from being any way beneficial to the people, that it tended to deprive them, where-ever clergymen were concerned, of the benefit of royal justice and royal protection. Nor had the cause he maintained the least connexion with their *liberty*, unless we suppose that their *liberty* consisted in making the church and all churchmen independent on the state, according to the principles of Gregory the Seventh. This most evidently appears from the account I have given of the whole process of his long dispute with the crown, on the authority of his letters, and those of his friends and the companions of his exile. But, as some persons think any opposition to a king a struggle for *liberty*, so others wish to recommend this prelate *in that light* to the esteem and favour of those, who would not respect him as a martyr for popery in its most extravagant claims. A late writer, more ingenious than accurate or impartial, speaks of him as *a guardian of the rights of the subject, and standing in the breach against an arbitrary power, which would have overturned them*. One should imagine from these words, See the History of the Life of Reginald Pole, p. 227, 228.
that the Constitutions of Clarendon had been ordinances imposed, not by the whole legislature, but by the *arbitrary power* of King Henry the Second. Whereas they not only were enacted by the advice and authority of parliament, but after a strict enquiry into what was *the law and custom of the land* before that time, which these statutes did no more than revive and confirm. The preamble to them says, "in præsentia
" *eiusdem regis facta est ista recordatio vel recognitio cujusdam partis con-*
VOL. IV. T " *suetudinum,*

"suetudinum, et libertatum et dignitatum antecessorum suorum, videlicet, regis Henrici avi sui et aliorum, quæ observari et teneri debent in regno."

What Becket opposed, even after this act of parliament, to which he had consented, is here declared, by the voice of the whole legislature, to be a recognition of customs, and liberties, and dignities of the king's ancestors, namely of King Henry the First and others, which ought to be observed and maintained in the realm. It was therefore the authority of the law, and of the legislature of England, not the lawless will or the arbitrary power of the king, against which Becket directed that opposition for which he has been sainted. The Great Charter does indeed begin with a confirmation of the rights and liberties of the church.

"Imprimis concessimus Deo et hac præsentî cartâ nostrâ confirmavimus."

"pro nobis et hæredibus nostris in perpetuum, quod Anglicana ecclesia"

"libera sit, et habeat omnia jura sua integra et libertates suas illæsas."

But it must be supposed, that these rights and liberties of the church were defined and limited by the laws and customs of the realm, and by that right, which is inherent in the supreme magistrate of every civil society, to administer justice impartially to all his people. That under the notion of ecclesiastical liberty the clergy meant *dominion*, appears undeniably from numberless facts in those times, and is plainly declared by a clergyman contemporary with Becket, who, speaking of the agreement between King Stephen and Henry Plantagenet, which (as it was made by the mediation of the bishop of Winchester) he supposed would confirm the pretensions of the church in their whole extent, cries out with a kind of rapture, *Clerus nunc demum DOMINABITUR!* But Henry, in concurrence with the whole legislature at the council of Clarendon, opposed the accomplishment of this prediction, and (as far as it could be done without an entire reformation from popery) resisted that *dominion*.

V. Diceto
Imagines Historiarum inter
D. Scriptores,
col. 528. sub
ann. 1153.

P. 229, 230.

On what foundation the abovementioned writer affirms, *"that the whole nation, at the accession of King Henry the Second, was in the utmost consternation, lest he should avail himself of the title of Conquest, and set aside the rights of the people, in imitation of the founder of the Norman line,"* I am at a loss to discover. Not one of the many contemporary writers says any thing like it; but all their histories are full of the national joy on that event. His treaty with Stephen was an unsurmountable bar to any title *by conquest*, if he had ever thought of setting up so wild a claim, which it was impossible he could do, as he had not even a *victory*, on which to ground it. While he was in arms against Stephen he had been chiefly supported by the English themselves; and after the death of that king the whole nation unanimously submitted.

submitted to his government, without a blow being struck against his right of succession.

P. 348, 349. *Becket had lately protected some clergymen, guilty of enormous and capital crimes, from being delivered up to the justice of the crown.*

Besides the instance I have given, and other similar cases, one is mentioned by some writers, as having greatly incensed and exasperated the king against the archbishop, but with circumstances so different, that the degree of guilt in the person whom that prelate protected against the royal justice cannot easily be discovered from these accounts. Diceto relates it in these words: "Huic controversiæ præstitit occasionem V. Diceto inter D. Scrip. sub ann. 1164. p. 537.

"Philippus de Broc, canonicus de Bedeford, qui tractus in causam
"propter homicidium in justiciarium regis verbum protulit contumeliosum." But Fitzstephen says nothing of his having been indicted for murder or homicide, but only that he had affronted Simon Fitz-peter, before a great audience, and while Simon was employed in the king's service, upon a difference or quarrel which arose between them at Dunstable, where that magistrate was with other itinerant justices. "Item erant regis justiciarii itinerantes aliquando apud Dunstable: orta est aliqua altercatio inter Simonem filium Petri, et quendam canonicum Bedefordiae Philippum de Brois. Questus est postea Simon regi, quod eum Philippus, in obsequio ipsius et magna audientia, turpiloquio inhonorasset." And one of the writers of the *Historia Quadripartita* tells the fact in these words: "Circa idem tempus Philippus quidam de Lidrois, canonicus, justiciarium regis quibusdam contumeliis affecit," without any mention of his being at the bar before the king's justices, on a charge of so heinous a nature. Probably, the account that is given by Diceto is the truth, which the other writers have softened. They also differ in their accounts of his punishment. Fitzstephen says, "Clerus ad regem mitigandum decrevit, per annum beneficium præbendæ suæ, simul et regni inhabitatione, Philippum privandum. Ita factum est, nec tamen regi satisfactum est." Diceto says, "Præbendæ suæ multatus est beneficio, pulsus est a regno per biennium." In the *Historia Quadripartita*, or *Quadrilogus*, it stands thus: "Querelâ ad archipræsulem delatâ, dictus clericus, etiam supra modum delicti, ut vel sic facilius quiesceret regis indignatio, est punitus, publicæ scilicet virgarum disciplinæ adjudicatus, et per annos aliquot ab omni officio et ecclesiastico beneficio, quod in regno habebat, suspensus." In the copy of this book prefixed to Becket's Letters, instead of *Philippus de Lidrois* it is *Philippus de Brois*.

P. 356. *It is my master's pleasure that I should forswear myself, and at present I submit to it, and do resolve to incur a perjury, and repent afterwards, as I may.*

The words in the original are, "*Est domini mei voluntas ut pejerem, et ad præsens subeo, et incurro perjurium, ut potero pœnitentiam acturus in posterum.*" It is not quite clear whom Becket meant by the words *domini mei*, whether the king, or the pope. If he meant the pope (whom in his letters he often calls *his master*), the reason must have been, that the friends he had gone to consult with had persuaded him to think, that his dissembling on this occasion, even so far as to take an oath he was determined to break, would be more agreeable to Alexander, than that he should stand the present danger of refusing to take it.

P. 358. *It must also be observed, that Baronius, who, in writing of these times, has transcribed several letters out of the Vatican manuscript of the same collection, and particularly that to which this appears to be an answer, has omitted to transcribe or mention this: and (what is no less remarkable) in the printed edition made at Brussels from the Vatican manuscript, this is also left out.*

The letter to which this is an answer stands in the Brussels edition Epist. 108. but its proper place is immediately after the letter from the clergy of England to Becket, which is there the 126th of the first book.

P. 358, 359. *If any dispute shall arise concerning the advowson and presentation of churches, between laymen, or between ecclesiasticks and laymen, or between ecclesiasticks, let it be tried and determined in the court of our Lord the king.*

Before the establishment of the spiritual court in England, rights of advowson were tried in the county courts, where the presence of the king's officer and other lay assistants prevented partial and unjust decisions by the ecclesiastical judge. But, after the separation of the ecclesiastical and civil jurisdictions by William the Conqueror, the clergy endeavoured to draw all causes of this nature into the spiritual court, which was very prudently resisted by the civil power in those days, and the trial thereof reserved to the king's supreme court.

Ibid. *It is unlawful for archbishops, bishops, and any dignified clergymen of the realm, to go out of the realm without the king's license; and if they*
80,

go, they shall, if it so please the king, give security that they will not, either in going, staying, or returning, procure any evil, or damage, to the king, or the kingdom.

This was enacted to prevent the too frequent and dangerous intercourse between the pope and English prelates. I agree with Mr. Selden, that the words in the original constitution, *personæ regni* should be translated *dignified clergymen*. See Titles of Honour, p. 732, 733. It takes in abbots, priors, the king's chaplains, and all clergymen who held of him in chief, but does not here, I think, extend to all *parsons*, or *beneficed clergymen*, as the word is commonly translated.

Ibid. *Persons excommunicated ought not to give any security by way of deposit, &c.*

The words in the original are, "non debent dare *vadium ad remanens*," which being somewhat obscure have been differently translated by different authors. I have rendered them according to the best information I could gain of their legal sense.

Ibid. *No tenant in chief of the king, nor any officer of his household, or of his demesne, shall be excommunicated, nor shall the lands of any of them be put under an interdict, unless application shall first have been made to our lord the king, if he be in the kingdom; or, if he be out of the kingdom, to his justiciary; that he may do right concerning such person, and in such manner, as that what shall belong to the king's court shall be there determined, and what shall belong to the ecclesiastical court shall be sent thither, that it may there be determined.*

One reason, assigned for this by the authors of those times, is, that the king should not ignorantly be exposed to converse with an excommunicated person. But, to prevent *that*, a bare notice given of it to the king would have been sufficient; whereas the constitution itself declares the intention to be, *that the king may do right concerning such person*. And it not only secures the persons of the king's tenants and officers from excommunication, but also their lands from an interdict, without application to him. It appears from a passage in one of Becket's own letters, that he himself understood the sense of it to import, not only that notice ought to be given to the king of the excommunication or interdict; but that his leave must be obtained. In truth it was meant as a check upon the power of the spiritual court, and (as appears from Eadmer) was coeval with the establishment of that court in England. Yet the latter part of it shews, that it did not take from thence all power of

V. Diceto, col. 536. M. Paris.

V. Epist. S. T. l. i. epist. 96.

NOTES TO THE THIRD BOOK OF

of inflicting the discipline of the church on scandalous finners because they held of the king, or served him, as his officers; but only prevented the exercise of that jurisdiction over his tenants and officers, without a reasonable cause, or in cases not properly cognizable there, but belonging to his courts of civil or criminal justice. The only fault of this law seems to have been the limitation of it, in making that a privilege of one class of the people, which was a right due to all.

P. 360. *Concerning appeals, if any shall arise, they ought to proceed from the archdeacon to the bishop, and from the bishop to the archbishop. And, if the archbishop shall fail in doing justice, the cause shall at last be brought to our lord the king, that by his precept the dispute may be determined in the archbishop's court; so that it ought not to proceed any further without the consent of our lord the king.*

In a letter of the bishop of London to the pope concerning the dispute between the king and Becket he explains this constitution as being no prohibition of appeals to Rome, but only a check on their being carried thither unnecessarily, and without the leave of the king. His words

W. Epist. S.T. are these: "*In appellationibus ex antiqua regni sui consuetudine id sibi vindicet (rex scilicet) honoris et oneris, ut ob civilem causam nullus clericorum regni sui ejusdem regni fines exeat, nisi, an ipsius auctoritate et mandato jus suum obtinere queat, experiendo cognoscat. Quod si nec sic obtinuerit, ad excellentiam vestram, ipso in nullo reclamante, cum volet quilibet appellabit.*"

Without question there is not in the words of this constitution any direct prohibition of appeals to Rome; it being only declared, that, upon an appeal from the archdeacon, the cause ought not to proceed any further than the archbishop's court without the consent of the king. But in effect this restraint would generally have stopt the cause in that court; and it manifestly asserted the royal supremacy, by subjecting the power of appealing to Rome, in ecclesiastical causes, to the will and pleasure of the king: whereas the pope claimed the right of receiving such appeals as inherent in his see. Henry's desire of gaining the consent of the bishops to this constitution was the reason of his avoiding an express prohibition: but he intended it should have the same operation, and the pope saw that intent.

P. 361. *Pleas of debt, whether they be due by faith solemnly pledged, or without faith so pledged, belong to the king's judicature.*

The clergy of England began first in the reign of King Stephen to extend their jurisdiction in the spiritual courts to the trial of persons for breach

Breach of faith (*pro læsione fidei*) in civil contracts; by which means they drew thither a vast number of causes which belonged to the civil courts, and of which they had no proper cognisance. To this encroachment they were instigated by the bishops of Rome, and therefore Alexander condemned the above-recited statute, which was made to prevent it.

Ibid. When an archbishoprick, or bishoprick, or abbey, or priory, of royal foundation, shall be vacant, it ought to be in the hands of our lord the king, and he shall receive all the rents and issues thereof, as of his demesne; and when that church is to be supplied, our lord the king ought to send for the principal clergy of that church, and the election ought to be made in the king's chapel, with the assent of our lord the king, and the advice of such of the prelates of the kingdom as he shall call for that purpose; and the person elect shall there do homage and fealty to our lord the king, as his liege lord, of life, limb, and worldly honour (saving his order) before he be consecrated.

Of the foundation of the right asserted to the king by this statute enough has been said in the preceding book of this History. I See p. 293. book ii. will only add here, that the same practice prevailed in the kingdom of France, in the dutchy of Normandy, and in the Norman kingdom of Sicily. Notice has also been taken of the *saving clause* at the end of it, which certainly opened a wide door to elude all the obligations contracted by the prelates in the act of homage and oath of fealty; though I find it affirmed by Becket, in a letter to the pope, *that the same form was then used by the whole Christian church.* He likewise adds, that, when his Holiness absolved him from the oath he had taken at Clarendon, that pontiff told him, *that not even for the preservation of his life should a bishop lay himself under any obligation without a saving to his order and to the honour of God:* which he adhered to pertinaciously in his whole dispute with the king. As for the form of election, which is laid down in this statute, it must be observed, that the making it *in the king's chapel*, by the principal clergy of the vacant church, with the advice of only *such of the prelates of the kingdom as he should call for that purpose*, seems to have been a practice of no very ancient date, not older, I presume, than the reign of Henry the First, or William Rufus. For Mr. Tyrrel has proved by many authorities, that, during the times of the Saxons, the English prelates had been usually elected in the witenagemote, or great council, and with the advice, or concurrence, of the whole assembly. It likewise appears from the Saxon Chronicle, that the same form was continued under William the

See p. 200. book ii.
V. Epist. S. T. C. l. iv. epist. 6.
See Tyrrel's General Introduction to his History of England, from p. 113 to p. 115. Chron. Sax. edit. Oxon. the p. 174, 175.

V. Epist. Petri
Blesensis ad
Archiepisc. Pa-
normitanum,
in Appendice.

the First. The words are these: "Hoc anno (1070) Lanfrancus, Cadomensis Abbas, compellente rege Wilielmo, et jubente Papâ Alexandro, Angliam venit; et primatum regni Anglorum in ecclesiâ Cantuariensi suscepit, eligentibus eum senioribus ejusdem ecclesiæ, cum episcopis, et principibus, clero et populo Angliæ, in curia regis." But whatever form, or appearance, of more or fewer electors, had been kept up in those times, or was continued in those of which I write, it appears from a passage in a letter of Peter of Blois, which is inserted in the Appendix to the preceding book of this History, that *the chief power* in these elections was *by the constitution of the kingdom assigned to the king*. Speaking of Henry the Second, he says, "Cum autem juxta regni consuetudinem in electionibus faciendis potissimas et potentissimas habet partes, &c. Indeed the statute here recited requires no more, than that the prelate shall be elected *with the assent of the king*; but in fact that *assent* was little different from a real *nomination*. The pope and clergy were desirous to exclude the king and all the laity from any share in their elections, which was one principal reason of Alexander's condemning this statute.

P. 365. *Another request had been made to Alexander by Henry, and prest with great eagerness, which was, that a commission appointing him legate over the whole kingdom of England should be granted by his Holiness to the archbishop of York, and sent to Henry to be delivered by him to that prelate, whenever he should think proper.*

V. Epist. S.
T. e Cod.
Vatican. l. i.
epist. 4.

Ibidem, epist.
5.

Some eminent writers, upon the authority of Hoveden, have erroneously supposed that a legantine commission was now granted to Henry for his own use and benefit. But the pope says to Becket, in a letter on this subject, that the king had asked it of him for the archbishop of York, not for himself. "Cum olim (filius noster Henricus &c.) à nobis et fratribus nostris instantius postulasset *legationem totius Angliæ Eboracensi archiepiscopo indulgeri*," &c. And afterwards, in the same letter, "Legationis literas *præfato archiepiscopo concedendas eidem regi concessimus*." And in another, on the same occasion, "Non ob gratiam *cessæ legationis* animus tuus deficiat, &c. Quoniam nos antequam ad hoc deduceremur, et liberum tribueremus consensum, prædicti nuncii nobis ex parte ipsius regis firmiter in verbo veritatis promiserunt, et super hoc, si vellemus, recipere juramentum obtulerunt, quod nunquam sine voluntate vestrâ eadem literæ *archiepiscopo Eboracensi redderentur*." John of Salisbury likewise says, in another letter to Becket concerning this business, "Ut pro certo accepimus, *domini Eboracensis legatio*

“*legatio omnino expiravit.*” The mistake of Hoveden might arise from the letters of legation being sent to the king, who desired to deliver them himself to the archbishop of York.

P. 368. *But his answer to this summons was an express declaration, that he would not obey it.*

In all this account I follow the authority of the bishop of London's letter to Becket concerning this transaction. I have given it in the Appendix belonging to this book, from the Cottonian manuscript now reposed in the British Museum; but it may be proper here to recite that part thereof, which relates to this matter. The words are these: “*Per-* Bib. Cott.
latum est ad vos mandatum regium, ut cuidam regni nobilium, super Claudius, b. 2.
prædio quod à vestrâ vendicabat ecclesiâ, quod justum foret exhiberetis. 3. f. 92.
Qui post statutos dies ad regem reversus asseruit, se penes vos justiciam
assequi nequivisse, et se ad id ipsum, juxtâ regni statuta, coram vobis,
suo congruoque testium juramento comprobasse. Quo regem pro-
sequente diutius, et super exhibendâ sibi justiciâ quotidie supplicante,
domini nostri regis ad vos est emissâ citatio, ut statuto die se vestra
sublimitas sibi exhiberet, ut, quod ipso mandante non egerat, eo cog-
noscente, litemque judicio dirimente compleret. Non est à vobis hæc
admissa citatio, verum vos in hoc sibi minime parituum declaravit a
vobis ad ipsum delegata responsio. Arbitratus hoc ipso dominus rex
juri suo detrahi graviter et potestati, ecclesiam regni jussit ad concilium
Northamptoniam convocari. Convenit populus, ut vir unus, et affiden-
tibus sibi quorum id dignitati congruebat et ordini, quod dictum est
super exspresso mandato suo, in querelam adversus vos, usus, quâ decuit,
modestiam et venustate, proposuit. Porro quod intendit, fratrum vestro-
rum non expectato vel expetito consilio, vestra in continenti confessio
confirmavit, adjiciens, vos ob id non paruisse mandato, quod Johannes
ille, qui regis ad vos mandatum pertulerat, in vestrâ præsentiam, non
evangelio sed tropario quodam proposito, juravisset. Est itaque dictum
in commune causam non eam esse ob quam mandatum regium oportuisset
omississe; regnique fore consuetudinem, in offensis hujusmodi, multa pecuni-
aria suam rem taxante misericordiam placari regem. Paruit regie
sublimitas vestra sententiæ, ad plenum cavens super judicati solutione.”

The recapitulation here made of all that passed on this occasion, in a letter to Becket himself, from the bishop of London, who was present at the whole proceeding, is of far greater authority than any relations of contemporary historians; and therefore whatever is said, by any of those writers, inconsistent therewith, deserves, I think, no credit. But the

grounds of the sentence, and the form of it, as given by Fitstephen, perfectly agree with the facts, as stated in the letter, though not as they are related by that writer himself. His account of it is as follows: "Vifum
 " est omnibus, ex reverentiâ regiæ majestatis et ex astrictione ligii homagii
 " quod domino regi fecerat archiepiscopus, et ex fidelitate et observantiâ
 " terreni ejus honoris quam ei juraverat, quod parum esset defensus vel
 " excusatus, quia citatus à rege neque venerat, *neque corporis infirmita-*
 " *tem, vel necessariam, quæ deferri non posset, officii ecclesiastici administra-*
 " *tionem, per nuncios allegaverat. Condemnandumque eum dixerunt in pæ-*
 " *nam pecuniariam omnium bonorum suorum mobilium ad misericordiam*
 " *regis."* But in the *Historia Quadripartita* it is said, that Becket proved he
 had sent a sufficient answer. "Trahitur in causam archiepiscopus, quod
 "ad quandam regis citationem se in propriâ personâ non exhibuerit.
 "Qui, licet sufficientem responsionem pro se misisse probaverit, tamen om-
 "nium, tum procerum, tum etiam pontificum judicio, mox omnia bona
 "ejus mobilia sunt confiscata, nisi forte regia clementia vellet tem-
 "perare judicium. Quod, sicut vulgo dicitur, *De omni mobili suo in*
 " *regis misericordia judicatus est.*" Gervase likewise affirms, that it
 was not from *contempt*, but from his being unwillingly detained by
 a violent fit of sickness, that he did not obey the king's citation, and
 adds, that he made this excuse by message in due form. "Quod
 "autem super hoc citatus ad regis non venit præsentiam non con-
 "temptus fuit, sed infirmitate valida invitus retentus est, atque super
 "hoc per duos legales viros, quos ipse miserat, excusatus est." Which
 is directly contrary to the letter above-recited, and to the grounds
 of the judgement as we find them delivered by Fitstephen in the passage
 before quoted. I will add, that the pope's decree annulling that judge-
 ment (which the reader may see in the Appendix in this book) alledges
 no such message, nor any sickness of Becket, but objects to it from rea-
 sons derived only from the policy and claims of Rome; whence, I think,
 we may draw a very strong presumption, that the account given by
 Gervase had no foundation of truth. It is also remarkable, that, in the
Historia Quadripartita, Becket is said to have complained, not that his
 plea of having been unwillingly detained by sickness had not been ac-
 cepted, but that this was a new form of judgement according to the new
 canons promulgated at Clarendon. For it had never been heard of before,
 that an archbishop of Canterbury was tried in the court of any king of Eng-
 land for any cause whatsoever, as well in respect of the dignity of the church,
 and the authority of his person, as because he was the spiritual father of the
 king

king and of all in the kingdom, on which account they were all bound to defer to him in all points. "Cum vero audisset se judicatum sic, quale, inquit, fit judicium hoc? Me etiam tacente secula post-futura non tacebunt. Nova quippe judiciorum forma hæc est, forte per novos canones proxime apud Clarendon promulgatos. Siquidem a seculo non est auditum quenquam Cantuariæ archiepiscopum in curiâ regum Anglorum pro qualicunque causa judicatum, tum propter dignitatem ecclesiæ, tum propter auctoritatem personæ, tum quod ipse regis et omnium qui in regno sunt spiritualis pater est, et ob id semper ei deferendum ab omnibus." The same writer adds, that he complained much more of his brethren the bishops, than of the judgement itself, or of the temporal barons who judged him, "multo magis quam de judicio, vel proceribus judicantibus, de confratribus suis et coepiscopis querebatur," because it was contrary to the order and cause of justice, that an archbishop should be judged by his suffragans, or a father by his sons; "ut archipræsul à suis suffraganeis, aut pater a filiis judicetur." I have followed Hoveden in saying that it was understood that a fine of five hundred pounds would be accepted by the king, at whose mercy this sentence left all the archbishop's goods and chattels. The words of that historian are these: "Et barones curiæ regis judicaverunt eum esse in misericordia regis, et, quamvis archiepiscopus niteretur judicium illud falsificare, tamen prece et consilio baronum posuit se in misericordiâ regis de quingentis libris, et invenit ei fidejussores." From hence it seems, that a fine of five hundred pounds in the money of those days was the usual composition for those whose goods and chattels were thus declared to be at the king's mercy, in misericordia regis. But neither Hoveden, nor any contemporary writer, except Fitzstephen, makes any mention of Becket's having complained to the bishops, that they had laid an excessive fine upon him, because, as an inhabitant of the county of Kent, he ought, by the custom of that county, to have paid but forty shillings for a default of this nature.

Some of our modern historians, in their accounts of this proceeding, See Tyrrel have translated the word *Troparium*, or *Tropar*, *Song book*: but Mr. and others. Carte more truly renders it *a book of Hymns sung in church before the P. 588. introit of the communion service*; and says in a note, "It was usual to put some passage of the Gospels at the head of such books used in divine service; and I have seen in old manuscripts the beginning of the Gospel of St. John so placed on purpose for people to swear on." It is reasonable to suppose it was so in this instance; and then nothing could be more frivolous than Becket's objection; but an oath upon a *Song book* could not have been admitted in any court.

It may be worth observing here, that, by the passage above-recited from the bishop of London's letter, it seems that the appellation of *vestra sublimitas*, *your sublimity*, was given in those days to archbishops of Canterbury: yet I do not find it in the letters of Becket's other correspondents.

Ibid. We are told by one author, that this sentence was pronounced by the bishop of Winchester, at the command of the king: but I think the fact very doubtful.

The silence of all the contemporary writers, except Fitzstephen, is alone a sufficient reason to doubt of the truth of this particular; but, if we consider the improbability of it, that doubt will be strengthened. For, in all accounts of the proceedings of the third day, we find, that the sentence of the court against Becket was to have been pronounced by the earl of Leicester, to whom, as grand justiciary, it properly belonged. And no reason appears, why in the trial of one of the spiritual lords, upon a charge of this kind, the temporal barons should say (as Fitzstephen makes them do) *vos, episcopi, pronuntiare debetis sententiam, ad nos non pertinet*. This cause was certainly not *ecclesiastical*; nor is it probable that the king would allow it to be so, and confirm that notion by committing the declaration of the judgement to one of the prelates. But, if the temporal lords and the king himself had so unaccountably erred in the nature of this proceeding, the pronouncing of the sentence would more naturally have belonged to the archbishop of York, than to the bishop of Winchester, one of Becket's suffragans.

P. 369. *The next day the king demanded of the archbishop five hundred pounds, which he said he had lent him, when that prelate was his chancellor. Becket affirmed, that it was given, not lent: but, as he could not prove the grant, the court condemned him to pay the money back, and he submitted to the sentence; five of his vassals offering themselves to be his sureties, as they saw the bishops unwilling to pledge themselves for him any further.*

This account is taken very exactly from Herbert de Boseham, one of the writers from whose history of these transactions the *Quadrilogus*, or *Historia Quadripartita*, and the Life prefixed to Becket's Letters in the Brussels edition, are compiled. There are some small differences in the passage as it is printed in those books, but not worth observing here. I will only take notice, that the authority of Herbert de Boseham, in this particular, is supported by Gervase of Canterbury; and that the former was

was present at this whole proceeding. Yet Fittstephen, who was also present, takes no notice of this demand of five hundred pounds, but mentions one of three hundred, which Henry made upon Becket, from P. 37, 38. his receipts of the lands belonging to two castles which had been in his custody; and another of five hundred marks, which that prince said, he had lent him in the Toulouse expedition; and a third of the same sum, for which he had been his surety to a certain Jew of that country. To the first of these, he says, the archbishop (after arguing, that he was not bound to make any answer thereupon, not having been cited concerning it) did nevertheless plead, that he had spent this money, and much more, in the repairing of those castles and of the royal palace at London, *as might evidently appear from the repairs themselves*. But, the king not confirming the truth of this assertion, and, on the contrary, demanding, that the cause should be tried, Becket voluntarily acquiesced in the payment of the money, for the sake of avoiding any offence to that prince on a pecuniary matter, and found three lay sureties, one of whom was the earl of Gloucester, *among his own vassals*.

What credit is due to this, or to what is said of the two other demands abovementioned, the reader will judge: but it is unsupported by the testimony of any other historian who lived in those times; and one can hardly conceive, that they should all have past it over in silence, had they known it to be true. Nor could it possibly have escaped the particular knowledge of Herbert de Boseham, who was present in the court. He and all of them were desirous to exaggerate the severity of the proceedings against Becket, rather than to suppress any part of them which might be thought a hardship. On the other hand, no mention is made by this author of the demand of five hundred pounds, which Herbert de Boseham and Gervase say, the king declared he had lent to that prelate; unless we suppose that the loan of five hundred *marks* in the Toulouse expedition, or that other of the same sum, for which the king was his surety (as we are told by Fittstephen) is to be understood to mean the same demand, notwithstanding the difference between *marks* and *pounds*, and though nothing is said there of his having agreed to pay the money, and found *five* sureties. Upon the whole, I think the authority of this historian too slight to be followed in any material variation from the others contemporary with him, especially in his accounts of these publick transactions.

P. 375. *The king in the mean while had demanded justice against him from the temporal peers, and had called in certain sheriffs, and some barons of inferior dignity, to assist in the judgement.*

The

The words of Fitzstephen, from whom I take this account, are these :

V. Stephanid. " Evocantur quidam vicecomites et secundæ dignitatis barones antiqui
in vitâ S. T. " dierum, ut addantur eis, et assint iudicio." The question is, who were
Cantuar.

L. iii. de Co- these *secundæ dignitatis barones*. Bracton says, " *Comites, vel barones, non*
ronâ, c. 1. " *sunt ameriandi nisi per pares suos, et secundum modum delicti, et hoc*

" *per barones de scaccario, vel coram ipso rege.*" It seems by this passage
that the *barones de scaccario* were then esteemed *pares baronum*. Mr.

Titles of Ho-
nour, 2^d part,
sect. xvi.
p. 717.

Selden says, " perhaps the barons of the Exchequer were therefore in
former ages called so, because they were anciently made of such as

" were barons of the kingdom, or parliamentary barons. If other-

" wise, why were they styled *pares* or *peers* to parliamentary barons in

" Bracton ?" Whether in the time of Henry the Second the barons of

the Exchequer were all barons of the kingdom I do not find. If they

were not, some of these might be the *barones secundæ dignitatis* here-

mentioned. The sheriffs, said by the same author to have been likewise

called in, to assist in this judgement, were not *barons of the kingdom*

(though it appears that many sheriffs were so at that time) ; for if they

had, they must of course have concurred in the judgement, *as peers*, and

could not have been mentioned with the *barones secundæ dignitatis* called

to it by the king. That *barones secundæ dignitatis*, in the general

sense of the words, meant great lords of manors, *not holding of the king*,

and therefore inferior to *his barons*, but who had *court barons* under

them, and in many records are called *barones*, I have hardly any doubt.

But the difficulty lies, in their being joined to the *barones regis*, the

greater barons, in the judgement of a bishop upon an accusation in par-

liament. That in calling them in the king did nothing irregular

against the privilege of the peerage, or the law and usage of those times,

may be reasonably inferred from no complaint being made of it in any of

the letters of Becket, or those of his friends, concerning this affair, or in

any history of his life, or chronicle of this reign. He and all his apolo-

gists would undoubtedly have taken advantage of any irregularity, to

have impeached the proceeding, as illegal and void. Whether the

barons of the Cinque Ports were then esteemed as *peers* to the king's

barons, so far as to be capable of concurring in a judgement where those

were concerned, I cannot say. It must be noted, that in the passage

here considered it is not said, that *all* the sheriffs, or *all* the *barones se-*

cundæ dignitatis, were called in, to this judgement, but only some of each

class, and they, *antiqui dierum*, aged men ; as we find that in framing

the constitutions of Clarendon the *antiquiores regni* were consulted, on

the meaning of which term a good deal has been said in one of the notes

to

to the foregoing book of this History. The word *evocantur* expresses that they were called out of *the general assembly*, from which the king's barons were separated before. Possibly they were not called to *concur* in the judgement, but only as *assistants, ut assistant judicio*, in order to give it a greater solemnity, or for their advice as to the method and order of proceeding.

Mr. Selden says, in his Treatise on Judicature in parliament, "Here C. i. ariseth a question, whether the spiritual lords *de jure* are triable by their peers, or no. Out of parliament they are not to be tried by the peers; but the doubt is, whether in time of parliament they are to be so tried or not. To me it seems they may, *if the matter be moved against them in parliament.*" And afterwards, "There be divers precedents also of the trial of *bishops* by their peers in parliament, *as well for capital offences, as misdemeanours, whereof they have been accused in parliament.*" And he gives two precedents of archbishops of Canterbury so tried for misdemeanours and for treason, to which may be added this of Becket.

P. 377. *Nor could he refrain from revenging himself upon two of the most clamorous, by very foul language; &c.*

I relate this on the authority of William of Canterbury, as cited in the *Quadrilogus*, or *Historia Quadripartita*, and, with some unimportant variations, in the Life of Becket prefixed to the Brussels edition of his Letters. This author must not be confounded (as he has been by some writers) with William Fitzstephen, from whom he differs materially in this and other particulars. For the latter, though he mentions the reproaches cast on Becket, takes no notice of the answers returned by that prelate, but says only, "*O quantum sustinuit in illa die in spiritu martyrium!*" because, I presume, he was sensible that such opprobrious railings, and foul language, were by no means agreeable to the patience of a martyr, or the temper of a saint. V. Stephanidi. P. 46.

Ibid. *Presently afterwards he received a message from that prelate, by the bishops of Hereford, Worcester, and Rochester, requesting his licence to go out of the kingdom.*

The words of Herbert de Boseham, in the *Historia Quadripartita*, are: "*Hymno vero dicto, archipræsul surgens à mensâ confestim Rogerum Vigornensem, et Robertum Herefordensem episcopos, et Roffensem episcopum, proprium capellanum suum, ad regem misit, postulans ab eo securum de terra sua egressum.*" Gervase of Canterbury also says, "*Vocatis*

P. 47.

“Vocatis autem tribus episcopis, quos arctius diligebat, ipsis mediantibus
 “petivit a rege *liberum de terra egressum*.” The obvious sense of the
 words *liberum de terra*, *vel securum de terra sua egressum*, is licence to go
 out of the kingdom; or, as Mr. Tyrrel expresses it, to go beyond sea.
 But, from the words of Fitstephen, in his Life of Becket, it should seem,
 that he only desired the king’s leave to go from Northampton under a
 safe conduct. “Postea tres episcopos, Walterum Roffensem &c.
 “misit regi archiepiscopus, *querere ab eo licentiam et conductum præstari*
 “*sibi in crastino recessuro*.” This may be thought the most probable;
 but Herbert de Boseham’s authority in this instance is superior to that of
 Fitstephen, as it appears that he was with Becket when this message was
 sent, and the only one of his attendants entrusted by that prelate with the
 secret of his flight. For he says, just before the account he gives of the
 message, “*respexit (archiepiscopus scilicet) ad discipulum qui scripsit hæc*.”
 And afterwards, “Igitur archiepiscopus, clam de nocte fugiens, fratrem
 “unum de ordine de Simplingeham secum habens, *me ducem*, versus
 “Aquilonem ad nobilem illam civitatem Lincolniam tendebat.”

P. 397. *Archbishops, bishops, and all dignified clergymen who hold of the
 king in chief, have their possessions from the king as a barony, and answer
 thereupon to the king’s justices and officers, and follow and perform all
 royal customs and rights, and, like other barons, ought to be present at the
 trials of the king’s court with the barons, till the judgement proceeds to
 loss of members or death.*

The evident intention of this constitution, or statute, was, to enforce
 on the prelates the obligations and duties arising from their baronies, as
 settled by the legislature under William the First, against the immunities
 they now claimed, and particularly the service of attending the judicature
 of the *curia regis* in all trials there. The exception to *cases of blood*
 seems to have been grounded on that part of the canon law, which had
 been received in this kingdom. For in the council of London held
 under Lanfranc, archbishop of Canterbury, in the ninth year of William
 the First, some canons made in Spain were admitted and confirmed, by
 which no bishop, or abbot, or ecclesiastical person, was allowed to judge
 in cases extending to life or limb, or to assist in such judgements. “Ex
 “conciliis Eliberetano et Toletano undecimo, ut nullus episcopus, vel
 “abbas, seu quilibet ex clero, hominem occidendum vel membris trun-
 “candum judicet, vel judicantibus suæ auctoritatis favorem commodet.”

Concerning this point there is a remarkable passage in the works of Peter
 de Blois. He says, in his treatise *De Institutione Episcopi*, “*Illud*
cælestem

V Concilia
 Magnæ Brit.
 edit. Wilkins,
 p. 363.

“cælestem exasperat iram, et plerisque discrimen æternæ damnationis accumulat, quod quidam principes, sacerdotes, et seniores populi, licet non dicentur judicia sanguinis, eadem tamen tractent disputando, et disceptando de illis, seque ideo immunes a culpâ reputant, quod mortis aut truncationis membrorum judicium decernentes, a pronuntiatione duntaxat aut executione pœnalis sententiæ se absentant.” This proves undeniably, that in Henry the Second’s time, the prelates only withdrew from the pronouncing of the sentence in cases of blood, but not from the trial, or from any debates thereupon.

P. 398. *The sons of villeins ought not to be ordained without the consent of their lords, in whose lands they are known to have been born.*

The reason of this was, that the ordaining of a slave had the effect of an enfranchisement, and therefore, the sons of villeins being born in slavery, it was robbing their lord, to set them free in this manner, without his consent.

P. 401. *For, about the beginning of the year 1165, he banished out of England, by a general sentence, all the relations, friends, and dependents of Becket, &c.*

Among these Fitzstephen particularly mentions some who had given him a night’s lodging in England when he fled from Northampton, and before he past the sea; “qui cum vagum in Angliâ a facie regis et profugum unâ nocte susceperant.” The others, who were not of his kindred, appear to have been chiefly his chaplains and servants, *clerici ejus et servientes*. Ibidem.

P. 403. *Ranulph de Broc, who had the principal care of this business, was a man of a cruel nature; and Gervase of Canterbury, who describes him as such, seems to impute these barbarities chiefly to his hatred of the archbishop, whose enemy he had been for some time.*

This is further confirmed by the testimony of Fitzstephen, who says, in his Life of Becket, “Secundo die natalis, veniunt Londoniam ap-
“paritores et officiales regis, inter quos quidam Randulphus de Broc,
“scelere ante alios immanior omnes, cui etiam, laico crudelissimo et archiepis-
“episcopi inimicissimo, sanctam illam ecclesiam Cantuariensem, primariam
“Anglorum sedem, custodiendam, immo potius destruendam, commisit.
“Iste cum aliis quibusdam regii mandati est executor: faciunt impetrata, et pejora impetratis.”

P. 404. *for the innocent sufferers met with pity and kindness in their exile: &c.*

P. 52.

Fittstephen tells us that all the women and infants were taken into nunneries. In citing this author I generally follow a printed copy of his History in the British Museum, which, though published at London in the year 1724, is become very scarce: but there are many manuscripts of it in different libraries, some of which I had seen before I knew of this edition.

P. 409. *But, to punish them as much as lay in his power, he commanded the eyes of the hostages they had formerly given him to be now put out, &c.*

Hoveden and Dr. Powel, in his Welsh chronicle, have given different accounts of this fact. The words of Hoveden are: "Justiciam fecit de filiis Ris, et de filiis et filiabus nobilium suorum, oculos puerorum eruit scilicet, et nares auresque puellarum abscidit." The Welsh historian takes no notice of any girls having been punished among the hostages, nor does he confine this cruel execution to those received from the prince and nobles of South-Wales, but says, "*the king caused the pledges eyes (whom he had received long before that) to be put out; which were Rhees and Cadwallon, the sons of Owen, and Cynwrick and Meredyth, the sons of Rhees, and others.*"

P. 412. *And, undoubtedly, if he had died without a son, her pretensions, and those of her husband in virtue of his marriage, might have occasioned a civil war in France; which probably would have ended in the settlement of the kingdom upon the house of Plantagenet: &c.*

It is supposed by some late French writers, that the exclusion of females from the succession to the crown of France was founded on the apprehension of being governed by a foreigner: but against that apprehension it would have been sufficient to forbid any princess of the royal blood of France to marry a foreign prince, on pain of being excluded from the right of succession; as we find to have been done by a fundamental law of the kingdom of Portugal, from which the house of Braganza derives its right to the crown, in preference to the issue of an elder daughter so married. And that there was nothing decided, with regard to this question, in the times of Louis le Jeune, so as clearly to establish the exclusion of a daughter of France, either on account of her sex, or

by reason of her marriage with a foreign prince, appears from the words of that monarch recited in the text.

See p. 412.

P. 421. *These have been very improperly confounded by historians with the Vaudois and Waldenses, who differed but little from the doctrines of the reformed churches in our days: whereas the Cathari were imbued with opinions destructive of true Christianity, if we can give any credit to the accounts that are delivered of their tenets by the best contemporary authors. But even the best, in these points, must be read with doubt and caution.*

The Waldenses were posterior to the Hereticks mentioned by William of Newbury; for Waldo, from whom that sect was named, did not begin to make any proselytes to his doctrine till some years after the time when those Germans came into England. The Vaudois, that is the inhabitants of the valleys of Piemont, held the same tenets with the Waldenses, but had professed them long before, as has been proved incontestably by their best historian, *Leger*. As for the Albigenes, I do not find that appellation made use of to denote any Hereticks till the beginning of the twelfth century; but the council of Tours, in the year 1163, made a canon, which says, “A partibus *Tolosæ* damnanda Hæresis “dudum emerfit, quæ more cancri paulatim se ad vicina loca diffundens “per Gasconiam et alias provincias quam plurimos jam infecit,” &c. And William of Newbury, in the account he gives of these Hereticks, so cruelly punished in England in the year 1166, says, that they were believed to be “ex eorum genere quos vulgo *Publicanos* vocant.” And adds, that those Publicans had spread from *Gascony* into Germany and many other countries. Matthew Paris also gives us the title of one of the canons of the Lateran council held in the year 1179, under Alexander the Third, in these words, “de Hæreticis *Albigensibus* et diversis eorum “appellationibus.” And the canon itself says, “quia in *Wasconiâ*, “*Albegesio*, et partibus *Tolosanis*, et aliis locis, ita hæreticorum (quos alii “*Catharos*, alii *Publicanos*, alii *Paterinos*, alii aliis nominibus vocant) in- “valuit damnanda perversitas,” &c. From hence it is evident, that those called *Publicani* by William of Newbury were afterwards called Albigenes, because they were found in the Albigeois (*in Albigesio*), and the parts about Toulouse. It likewise appears that *Cathari* was another name given to them. The tenets of these are said to have been nearly the same with those ascribed to the ancient Manichæans. We are told that the foundation of all their errors was a doctrine derived from those Hereticks, that the bodies of men, with all the rest of the

V. Joh. Conradi Fuefilini Dissertatio de Fanaticis Seculo XII in Anglia repertis, p. 11, 12, 14, 15.

V. Histoire Generale des Eglises Evangeliques des Valles de Piemont.

V. Joh. Conradi Fuefilini Dissertatio de Fanaticis Sec. XI. in Italiâ detectis. Et ejusdem de Fanaticis Sec. XII. in Angliâ detectis.

material and visible universe, were formed by the devil, and that into those bodies he put some spirits, whom, in his rebellion against God, he had led away captive, or seduced to his side, and to redeem whom from that thralldom the *Son* and *Holy Ghost* had been afterwards produced by God from himself. This induced the Manichæans and the Cathari to conclude, that the continuing by propagation the devil's work, human flesh, was a most damnable sin, and therefore they held marriage inconsistent with salvation. Those among them who were called *perfect*, either lived in celibacy, or, if married, renounced all carnal use of their consorts. But the others, whom they only termed *believers*, were permitted to marry, and, if married, to remain for some time in that state, without renouncing the duties of it; yet under a promise that before the end of their lives they would renounce them, and become *perfect*; as they could not otherwise be saved. And, placing all holiness in a total abstraction from the world and carnal pleasure, they paid no regard to any sacraments, or external means of salvation, but considered whatever was visible and corporeal as unholy and belonging to its author and ruler the devil. With this account of the tenets of the *Cathari*, or *Puritans*, called also *Publicans* in those days, what we are told by William of Newbury of the answers made by the Germans, who came over into England in Henry the Second's time, upon their examination at Oxford concerning the eucharist, baptism, and marriage, sufficiently agrees; but it seems that Gerard, their teacher, did not explain their opinions concerning the Deity, or the formation of the visible universe by the devil; on which points he might probably be more reserved in his answers, as they were the secrets and mysteries of the sect. Nor would the English bishops, to whom their inward doctrines were unknown, press them so closely on these articles, as those who examined them in France, or in Germany, where, the sect being numerous, their secrets were more divulged. It must be observed, that at the time when the great persecution was raised against the Albigenes in the earldom of Toulouse and in Gascony, though some Cathari were among them, yet a great number of others, who had also separated from the communion of the Roman catholic church, Petro-Bruisiens, Henri-cians, Waldenses, and Vaudois, had gathered together in those parts, and were therefore called Albigenes. Nothing could be more different from the doctrine of the Cathari than that of all these sects, which was much the same with the creed of the Protestant churches in these days. But, to make them more odious, the worst notions of the Cathari were imputed to them all, and many calumnies added, which were really true of none. Not only their opinions were misrepresented, but their actions

were

were traduced. Yet I will not affirm, that the manners of the Cathari were always pure. St. Bernard, reproaching them with their condemnation of marriage, says justly. "*Tolle de ecclesia honorabile connubium et*
" iborum immaculatum, nonne repleas eam concubinariis, incestuosis, semini-
" fluis, mollibus, masculorum concubitoribus, et omni denique genere im-
" mundorum?" That such disorders might arise among some of the Cathari, from their denying to themselves the proper indulgence of their natural desires in lawful marriage, I make no doubt. So false a notion of purity must necessarily lead to all kinds of impurity. But Bernard ought to have seen, that his argument was as good against the celibacy of the clergy, which Rome established in his days, as against the practice of these Hereticks condemned by him and by Rome. I will only add, that the Cathari, from the best accounts delivered to us of the opinions they held, appear to have differed among themselves not a little in the fundamental article of their faith. For some held two principles, eternal and opposite; others only one, against whom the devil rebelled. The former supposed that the evil principle, whom they called the prince of darkness, in the war he waged against God, whom they called the prince of light, and believed to inhabit in light, as an emanation from his essence, took and carried away with him some part of that light, out of which, joined to darkness, he made the visible world. The latter thought, that God produced all spirits, and all matter, from his own substance; but that the devil, having rebelled, and being thrown out of heaven, had formed the visible world from pre-existing matter, to be governed by himself; and had particularly made the bodies of men to be inhabited by the spirits who were partakers of his guilt and had shared in his fall. It would be unnecessary and tedious here to enter into all the niceties of the differences among them on this and other points. The desire of accounting for the hardest question in theology, *the origin of evil*, was the source of all their absurdities; and, in their notions of the means of recovering from the evil which appears in the world, they run into mysticism and fanatick enthusiasm. I will only add, that we are told many persons of quality had come into this sect in the age of which I write.

V. Disserta-
 tion de Fana-
 ticis Sec. XII.
 in Angliâ de-
 tectis.

P. 443. *But before he had received any intelligence of it, or of what had been done to his prejudice by Alexander himself, he had found means, notwithstanding all the vigilance of the government in guarding the ports, to get the pope's mandate, which notified his legantine power to the bishops of his province, and a copy of the bull of legation itself, delivered, by a per-*
son.

NOTES TO THE THIRD BOOK OF

son unknown, to the bishop of London, while he was officiating at the high altar, on the feast of St. Paul's conversion, in the year eleven hundred and sixty seven.

There is an unaccountable difference in the date of this mandate with that of the pope's letter to Becket, which contains his commission. The last is dated in October, the former in May. It is certain they both came to him some time before the end of January, in the year 1167; as appears by these words, in the 130th Epistle of the first book of Becket's Letters, "Londoniensis jam recepit literas (legationis scilicet) vobis omnibus ostendendas." Now it is said in another letter, that the bishop of London received them from Becket the 25th of January, upon the feast of St. Paul. And by many passages in the foregoing letters it appears, that it could not be written later than the beginning of February, in the year 1167.

See Epist. 129.
135. 163, 164,
165. l. i.

P. 456. *having built there a stone bridge, which was accounted one of the noblest works of that age.*

C. xxxiii.

According to a late writer on the Antiquities of the City of Rouen, this bridge was seventy five French ells in length, and supported by thirteen arches, of which the five middle ones were of a prodigious height, and drew the admiration of all who saw them. But they were too high and too narrow. In the year 1502 three arches fell, and in 1533 two more, after which, others beginning to give away, the bridge became impassable; and it being found too expensive to repair it again with stone, a bridge of boats was erected in 1626, which has since been rendered more perfect, and by rising and falling with the tide, opening easily in the middle to let vessels pass through, and being taken to pieces without difficulty when any repairs are wanting, is very convenient, though not so magnificent as that built by Matilda, all the ruins of which are now entirely demolished.

P. 457. *When he had acquitted himself of that duty, and seen her body interred, as she had desired it might be, in the Abbey of Bec, &c.*

P. 143.

Matthew Paris has delivered to us the following epitaph on this great lady:

*Ortu magna, viro major, sed maxima partu
Hic jacet Henrici Filia, sponsa, parens.*

But he names not the writer. Another, said to have been written by Arnulph bishop of Lisieux, is given by Du Moulin, in his History of Normandy.

Regia

*Regia Progenies, stirps regia, Cæsaris Uxor
 Hic est magna brevi clausa Matilda loco.
 Virtutum titulis humani culmen Honoris
 Excessit mulier nil muliebris habens,
 Septembris decima : regno post regna recepto,
 Creditur æternum continuasse diem.*

One can hardly think that the two last of these verses were by the same hand as the former, which, as well as the distich transmitted to us by Matthew Paris, are some of the best of that age.

P. 460. William of Malmſbury tells us, that King Henry the First, when Robert the Second, Earl of Flanders, arrogantly demanded of him a pension, or annual subsidy, of three hundred marks, which the Earl's father had received from William Rufus, returned this answer, "that the kings of England were not accustomed to pay tribute to the Flemings;" &c.

Rymer, in the Preface to his *Fœdera*, blames William of Malmſbury for calling that *tribute*, which was only a payment in consequence of subsidiary treaties. But there was no impropriety in Henry's making the answer reported by that historian, if a renewal of those treaties was imperiously demanded, *quasi pro imperio*, as Malmſbury expresses it. He might be willing to pay it as a subsidy, when occasion should require a stipulation of that nature, though he would not suffer it to be asked or exacted as a *tribute*. Nevertheless the Flemish annals, and other modern histories, are justly censured by Rymer, for speaking of these subsidies as a real tribute paid by several successive kings of England to the earls of Flanders; which is sufficiently disproved by the treaties he has published from our records.

P. 464. Yet it was believed that he, with Moses, had the angel of the Lord, that is, the holy spirit, going before him in the law, who would always protect him, and not suffer him to have another God, or to prefer either rewards, or person, or cause, to the divine word.

The word *cause* is remarkable. Becket was so sensible that his *cause* with the king would not bear an examination, that he endeavoured to possess the legate with an opinion, that no regard was to be paid to the merits of *that*, but only to the privilege he laid claim to, of not being questioned on this matter, by virtue of the immunities given to the clergy (as he supposed, by *the divine word*), that is, by the scriptures as interpreted by the pope and the canonists. The Latin original is as follows:

"Nominis

V. Epist. S.T. "Nominis tamen vestri (virtutum rectius dixerim), clarescit opinio, ut
e Cod. Vatic. "angelum Domini cum Moise, id est, Spiritum sanctum in lege prævium
l. ii. epist. 18. "habeatis, qui custodiat vos semper, et Deum recentem habere non pa-
"tiatur, ut verbo Dei aut munus, aut personam præferatis, *aut causam.*"

Ibidem, epist. 22. In like manner he tells the pope in another letter, that, from the tenour of
the letters, which he and the king of France had received from his
Holiness, he had rather expected the consolation of peace, *than the con-
fusion which would arise from the decision of questions between him and the
king of England.* "A quo magis sperabamus, juxtà tenorem mandati
"vestri ad dominum regem Francorum et ad nos emissi, solatium de
"consolatione pacis, quam *confusionem de quæstionum decisione inter regem
"Anglorum et nos.*"

P. 478. No regard was paid in Germany to the sentence of excommunication
and deposition pronounced against him by Alexander, the summer before.

V. Essai sur
l'Histoire Ge-
nerale, t. i.
p. 293.
Fred. Barb.

Monsieur Voltaire, in his Essay on General History, praises Alexander
the Third for his moderation and prudence, because, though he had often
excommunicated the emperor, he never went so far as to *depose* him.

His words are these: "Il est très remarquable, que, dans ces longues
"diffensions, le Pape Alexandre III, qui avoit fait souvent cette cere-
"monie d'excommunier l'empereur, n'alla jamais jusqu'à le déposer.
"Cette conduite ne prouve t'elle pas non seulement beaucoup de sagesse
"dans ce Pontiffe, mais une condamnation generale des excès de
"Gregoire VII?" But that all this is erroneous appears from two letters

written at that time by one well apprised of Alexander's proceedings.
John of Salisbury wrote thus to the bishop of Poitiers: "Fredericus ille

"schismaticus insignis, dum in ecclesiam maliciosius et crudelius sævit,
"factus est EX-AUGUSTUS," &c. And in another letter, to one of his friends

V. Epist.
Tho. Becket,
l. ii. epist. 65.
89.

in England, he says, "Vicarius Petri à Domino constitutus super gentes
"et super regna, *Italos et omnes qui ei (Frederico scilicet) ex causâ imperii
"et regni, religione jusjurandi tenebantur adstricti, à fidelitate ejus absolvit,
"et Italiam jam totam à facie furentis et præsentis tantâ felicitate et
"celeritate excussit, ut in eâ nihil habere videatur, nisi tortores, quos
"evitat interdum, et angustiarum, quas evitare non potest, jure suppli-
"cium. Abstulit ei etiam regiam dignitatem, ipsumque anathemate con-
"demnavit, et inhibuit auctoritate Dei, ne vires ullas amodo in bellicis
"congressionibus habeat, aut de Christiano aliquo victoriam consequatur, aut
"alicubi quiete et pace gaudeat, donec fructus pœnitentiæ condignos opere-
"tur. In quo secutus est exemplum Gregorii septimi, decessoris sui, qui*

"nostrâ

"*nostrâ ætate Henricum imperatorem, ecclesiæ privilegia convellentem, deponens in concilio Romano simili sententiâ condemnavit.*" These proofs are decisive; and there is a further confirmation of them from Alexander himself in a letter he wrote some time afterwards to the bishops of Rouen and Nevers, his legates to Henry. Speaking of that prince, he says, "*Quod si nec sic resipuerit, personæ suæ, sicut nec Frederico dicto imperatori fecimus, nequaquam parcemus,*" &c. The word *dicto* expresses, that he held Frederick to be no longer emperor, but only *so called*. Nor was it from any moderation or prudence in him, that the sentence of deposition, which he had pronounced, had not so full an effect against this prince, as Gregory the Seventh's had against Henry the Fourth, but merely from his want of power to enforce it as his predecessor had done.

V. Epist. T.
Becket, l. v.
epist. 4.

P. 479. *He had written in the same style to the college of cardinals &c.*

Several letters relating to this affair are strangely misplaced in the printed edition of them from the Vatican manuscript, being there in the fourth book, instead of the second, to which they plainly belong.

See epist. 3.
13, 14, 15, 16,
17, 18, 19, 20,
21, 22. 51.

P. 487. *While these negotiations were depending, the earl of Salisbury was surprised and treacherously murdered, on his return from a pilgrimage, by Guy de Lusignan and others of the same family.*

The abbot of Peterborough ascribes this murder to Geoffrey de Lusignan, Guy's brother; but Roger de Hoveden, who has corrected some mistakes in that author, ascribes it to Guy. From other writers it appears that all the lords of that family were concerned in the murder; but it certainly was committed by the hand of Guy, who fled and went to the Holy Land immediately after the fact. William of Newbury, speaking of the daughter of Amalarick, king of Jerusalem, says, "*Nam, tempore fratris regis, voto proprio secundas contraxerat nuptias cum homine peregrino, Guidone scilicet quodam Piſtavenſi, qui à facie regis Anglorum Henrici secundi de Aquitaniâ fugerat, et regi Jerosolymorum egregiè militabat.*"

V. Benedic.
Abb. p. 443.
vol. ii.
V. Hoveden,
sub ann. 1168.

P. 497. *The articles were, first, that Henry should renew his homage and fealty for Normandy in the accustomed form.*

Some authors say, that the young Prince Henry, in consequence of this treaty, did homage to Louis for Bretagne, having done it before for Normandy. But it appears by the 66th epistle of the second book of Becket's Letters, and by the 268th of John of Salisbury's printed at Paris

Chron. Norm.
& Gervase.

in 1611, that King Henry himself, not his son, did homage for Normandy; and there could be no reason to demand it for Bretagne of the latter, who had no claim to Bretagne, and was not in possession of Normandy, under which Bretagne was a fief. This dutchy had no dependence either upon Anjou or Maine.

P. 497, 498. *That he should give up the earldoms of Anjou and Maine, and the fealty of the vassals thereof to Prince Henry, his eldest son; who should pay homage and fealty for them to the king of France, and owe nothing more either to his father or brothers, with respect to these earldoms, than merely that which their merit or nature might require.*

The reason of the latter part of this article I take to be, that, whereas the dukes of Normandy had formerly laid claim to Maine, and those of Aquitaine to some districts belonging to Anjou, the young prince was now to hold these two earldoms without any dependence on either of those dutchies, and also free of any claim, which the dukes of Bretagne may have had to any districts therein.

P. 504. *But he replied, "It was true, many of his predecessors were better and greater than he: but every one of them had, in his own time, cut off some things, which raised themselves up against God, though not all. For if they had then entirely eradicated all, he should not be now exposed to this fiery trial, by which being proved, as they had been, and partaking their labour, he might also be found worthy of their praise and reward. Nor, if any one among them had been too cool, or too immoderate in his zeal, was he bound to follow his example, one way or another." He added other arguments to the same purpose, concluding, "that the primitive fathers had suffered martyrdom, because they would not subject the name of Jesus Christ to any other name: nor would he, that he might recover the favour of a man, give up the honour of Christ."*

This answer is so much in Becket's style, that I am inclined to believe it is genuine; because, though none of the letters concerning this meeting report either these words, or those of the king to which they were a reply, yet one of them plainly intimates, that more was said on both sides than is there told. But what the same historians who mention these particulars add about Becket's disgrace with Louis, on account of his behaviour upon this occasion, and the universal outcry against him, so that even the monks themselves entirely condemned and reproached him for it, I think cannot be true; because the monks in what they wrote on this

V. Epist. 8.
l. iv.

V. Quadril.
Gervaise.

this subject to the pope expressed no disapprobation at all of his conduct, but rather approved it, only saying, that *many pressed the archbishop to comply with the king*. And it can scarce be supposed that they would have omitted to mention a circumstance of so much importance as the French king's displeasure, or that Becket himself would have been silent about it in what he wrote to the pope concerning this conference. Whereas, on the contrary, he seems in that letter to depend entirely upon the protection of Louis, and triumphs in the ascendant which this monarch appeared to him to have gained over Henry. Indeed we are told by the abovementioned historians, that his disgrace did not continue long; for that, after a few days, Louis repented on a sudden, threw himself at his feet, and begged his pardon. But not to insist on the great improbability of this account, Becket's letter to the pope was certainly written immediately after the conference; and even supposing that the king had been reconciled to him before he wrote it, he would undoubtedly have given that pontiff information of so material an event.

P. 520. *But at the same time he tells the pope, that the king now declared, he did not demand of him any account of his administration as chancellor, nor the money he then had received or stood engaged for, but only what he had received that belonged to the crown since he was made archbishop of Canterbury; for which (he says) it was universally known that he had accounted.*

This, I suppose, led Hoveden into the mistake of saying, that Becket had accounted for all the money with which he was charged: an assertion contradicted by all the other contemporary historians, and (what is of more weight) by the letters of that prelate himself.

P. 525. *or to the judgement of the Gallican church, or the university of Paris.*

The words in the original are, "paratum esse stare dicto curiæ Domini sui, regis Francorum, vel judicio ecclesiæ Gallicanæ, aut *scholarium Parisiensem*." It may be doubtful whether the term *University* was yet applied to the schools of Paris; but I have used it as conveying the same sense to the reader which that word now imports. And this passage shews, that the reputation of those *schools* was very great in those days.

P. 529. *Nay, such was the inhumanity of the Roman civil laws, even under Christian emperours, that in one of Arcadius and Honorius it is called*
Y 2 *a special*

a special act of imperial mercy to grant to the sons of a traitor their lives; and they are declared thereby incapable of any inheritance, not only from their father, but from any other relation, or of receiving any bequest from a stranger, or of attaining to any honours and dignities in the state.

The words here referred to are these: "*Filii vero ejus, quibus vitam Imperatoriâ specialiter lenitate concedimus (paterno enim deberent perire supplicio in quibus paterni, hoc est, hæreditarii criminis exempla metuntur) à maternâ, vel avitâ, omnium etiam proximorum hæreditate, ac successione, habeantur alieni, testamentis extraneorum nihil capiant, sint perpetuo egentes et pauperes, infamia eos paterna semper comitetur, ad nullos prorsus honores, ad nulla sacramenta perveniant. Sint postremo tales, ut his perpetuâ egestate sordentibus sit et mors solatium et vita supplicium.*" (Codicis l. ix. tit. 8. ad legem Juliam Majestatis, l. v.)

Yet even in the same Code of Justinian, from whence I have cited the foregoing passage, an imperial constitution is to be found of the same emperours, containing maxims entirely opposite to those of the former, and agreeable to the justice and lenity of a good government. "*Sancimus ibi esse pœnam ubi et noxia est. Propinquos, notos, familiares procul à calumniâ summovemus, quos reos sceleris societas non facit. Nec enim adfinitas vel amicitia nefarium crimen admittunt. Peccata igitur suos teneant auctores; nec ulterius progrediatur metus, quam reperiatur delictum. Hoc singulis quibusque judicibus intimetur.*" (Codicis l. ix. tit. 47. 22. De Pœnis.) But there is a doubt whether this abrogated the former law, or extended to cases of treason. Some of the best civilians assert it did not, but only to other capital crimes. Indeed the laws of treason, or *læsæ majestatis*, made under the emperours, are by much the worst part of the civil law.

P. 532. *The bishop of Norwich, though expressly forbidden by particular orders from the king, published a sentence of excommunication against the earl of Chester and several others, conformably to injunctions laid upon him by Becket, even in the presence of the officers who brought the prohibition.*

I make no doubt that this prelate would have been punished for an act so highly contumacious (whatever good reasons may have determined the king to connive at the disobedience of the other prelates to his orders relating to the articles he had sent over), if the bishop of London had not been also involved in the offence of publishing the censures fulminated by Alexander against the earl of Chester; as we find he was by an article

article added to those abovementioned, which the reader may see in the appendix to this book. It appears from thence that both these prelates were declared to be *in misericordia regis*, at the mercy of the king, for having, in obedience to a mandate from the pope, put the lands of the earl of Chester under an interdict, and published the sentence of excommunication, which the pope had past against him, without leave of the king's justices, against the statutes of Clarendon. That the bishop of London should concur in such an act is surprising! but his merit to the king in other parts of his conduct atoned for this; and, to avoid an appearance of partiality in a matter of justice, the same pardon was extended to the bishop of Norwich.

P. 548. *Upon the report of the commissioners, Henry turned out at once almost all the sheriffs in the kingdom, and their bailiffs, or deputies, for oppressing his people, &c.*

The words of Benedict, abbot of Peterborough, in his History of the Life of King Henry the Second, are these: "Eodem anno rex tenuit P. 3. sub ann. 1170.
curiam suam in solemnitate Paschali apud Windeshovres (Windsor)
cui festo Paschali interfuerunt Willelmus rex Scotiæ, et David Frater ejus,
et fere omnes nobiliores et majores Angliæ, tam episcopi, quam comites et
barones. Peraçtâ igitur solemnitate Paschali, perrexit inde Lundonias,
et ibi magnum celebravit concilium de coronatione Henrici filii sui ma-
joris; et de statutis regni sui: et ibidem deposuit fere omnes vicecomites
Angliæ, et ballivos eorum, pro eo quod male tractaverant homines regni
sui. Et unusquisque vicecomitum et ballivi eorum plegios invenerunt de se
ipsis, quod ad rectum starent et ad adresciandum D. regi et hominibus
regni quod eis adresciare deberent de prisis suis. Et postea fecit rex
omnes homines regni sui, scilicet, comites, barones, milites, francostenentes,
et etiam villicanos, per singulos vicecomitatus jurare, tactis sacro-sanctis
evangeliiis quod verum dicerent," &c. By this account it seems that the inquisition was made after the parliament held at London, wherein the sheriffs were turned out for the malversation and oppression of which they had been guilty; which supposes that their punishment preceded the enquiry into their guilt. But Gervase of Canterbury relates the facts in their proper order. "Rex autem, convocatis optimatibus suis, instituit
abbates et clericos, comites et milites, qui circumirent terram, &c.
et hæc inquirere debuerunt. In primis exigent barones errantes vadium
et plegium ab omnibus vicecomitibus," &c. And afterwards (when he has given all the articles of the enquiry, which the reader may see in the appendix to this book), "*Factâ autem hac inquisitione mirabili omnes*
jussi

“*jussi sunt ut essent coram rege in civitate Londoniæ xviii kal. Julii, &c.*”
 “*Convenerunt interim die statuto, ex mandato regis, ad Londoniam totius*”
 “*Angliæ episcopi, abbates, comites, barones, vicecomites, præpositi, alder-*”
 “*manni, cum fidejussoribus suis, timentes valde omnes.*” This is not a full description of all the members of the parliament, but only of those who were ordered to appear with their sureties, *cum fidejussoribus suis*, being all such as had exercised some kind of *judicature*. But it appears that the enquiry was ordered in one parliament, and the proceedings upon it carried on in another. The abbot of Peterborough, in the passage before-recited, says, the king held the great council at London, “*de coronatione Henrici filii sui majoris, et de statutis regni sui.*” We have no account of any statutes made in that parliament; but from these words one should imagine that some were made. Probably the meeting at Easter, in which the enquiry was ordered, had not been so full and general as this at London. The abbot says afterwards, that the proceedings on this matter proved in the issue detrimental to the nation, “*quia, post factam inquisitionem, rex reposuit quosdam vicecomitum illorum iterum in locis suis; et ipsi post ea multo crudeliores extiterunt quam antea fuerunt.*” If this was true in any instances, it may have arisen from the disorder and confusion of the following civil war, in which some of those, who had been turned out from their shrievalties, might, in recompense for services done to the king against the rebels, be restored to their offices. But Roger Hoveden, who mentions the turning out of the sheriffs, takes no notice of this circumstance; nor is it mentioned by any other contemporary author.

P. 549. *When he had thus re-established the good order of the state, and made his people the best reparation in his power for what they had suffered by his absence, he proposed to his parliament, which had been summoned to meet him on the feast of St. Barnabas, the affair of his son's coronation.*

In relating these transactions concerning the coronation Gervase of Canterbury confounds the times, as if many things, which were done at considerable intervals, had happened on the same day. He also seems to suppose, that the members of this parliament were quite unapprised of the intention of Henry to cause his son to be crowned, till he mentioned it to them in form: but there are many clear indications in the letters to and from Becket, that this design was made publick before he came from France. No notice is taken by Gervase of the sheriffs being turned out; but, on the contrary, one would think, from what he says on the subject, that all offenders convicted on this extensive inquisition had

had gone off unpunished, in which he is contradicted by Benedictus Abbas, and by Roger de Hoveden.

P. 573. *Henry was now returned into Normandy, where he was seized with an illness so violent, that thinking himself in danger he made his will, &c.*

It was about the feast of St. Laurentius (the 10th of August) that Henry fell sick of this illness, to which Rapin Thoyras ascribes his reconciliation with Becket, which was made on the 22^d of July in the same year. So inaccurate is that author in the account he gives of this reign.

P. 589. *that he was very unfortunate to have maintained so many cowardly and ungrateful men in his court, none of whom would revenge him of the injuries he sustained from one turbulent priest.*

These are a translation of the words of King Henry, as reported in the *Quadrilogus* and *Gervase of Canterbury*. But Edward Grime (or Grim), in his manuscript contemporary history of this event, preserved in the library of the Royal Society at London, reports them thus: "*Inertes ac* MSS. fol. 36.
"*miseros homines enutriivi et erexi in regno meo, qui nec fidem ferunt domino*
"*suo, quem à plebeio quodam clerico tam probrose patiuntur illudi.*"

P. 591. *The words he repeated there, as spoken by Henry, even admitting that they were given without any exaggeration, would not authorise the construction he now put upon them.*

He there says only that Henry had promised in general terms *to redress* V. Epist. 45.
the wrong that had been done to the church of Canterbury, and make such an an- l. v.
swer to those who had betrayed the archbishop and him, as the deserts of traitors
required. But these words rather reserved to Henry himself the sole right
and power of doing him justice with regard to that affair. Nevertheless
the earl of Blois, in a letter he wrote to the pope on the subject of
Becket's death, affirmed to his Holiness, "*that the king had, in his hear-*
"*ing, upon the day of his reconciliation with Becket, granted him free and*
"*full power to pass sentence upon the bishops who had presumed to crown the*
"*young king, at his own and the pope's discretion.*" This testimony is
strong: but how can one account for Becket's silence upon it, in his letter
to the pope, wherein he relates the particulars of what had past on that
day. He says there, that the conversation he had with the king con-
cerning that matter, and of which he gives a very particular detail to his
Holiness, was *apart from all the company.* "*Et habitis paucis sermoni-* V. Epist. 45.
"*bus, solis nobis præscentibus cum domino Senonensi, nos, illo divertente,* l. v. Append.
"*stupentibus universis, traxit in partem.*" The earl of Blois therefore
could

could not possibly have heard this conversation; nor does the archbishop take notice to Alexander of any other on this subject. I should therefore suppose, that the earl, who stood at a distance, seeing Becket throw himself at the feet of the king, and being afterwards told by Henry, that this action was the effect of that prelate's gratitude for the promise he had made, of doing justice to him and his church concerning the affair of the young king's coronation, gave this sense to the words, and repeated them upon memory, not very accurately; which might naturally happen at such a distance of time, and when his mind was inflamed with anger upon the murder of Becket. For, if Henry had really spoken these words, his rage against Becket for having done what he had given him leave to do would be quite unaccountable, as well as that prelate's continued silence upon it through his whole correspondence.

*End of the Notes to the THIRD BOOK of the History of the Life of
King HENRY the Second.*

A P P E N D I X

TO THE

S E C O N D B O O K

O F T H E

History of the Life of King Henry the Second.

V O L U M E II.

N^o I.

Carta Libertatum Angliæ Regis Henrici II.

From the Red Book of the Exchequer.

HENRICUS, Dei gratiâ, Rex Angliæ, Dux Normanniæ et Aquitaniæ, Comes Andegaviæ, baronibus et fidelibus suis, Francis et Anglicis, Salutem.

This is referred to in p. 15. vol. ii.

Sciatis me, ad honorem Dei et Sanctæ Ecclesiæ, et pro communi emendatione totius regni mei, concessisse et reddidisse, et præsentî cartâ meâ confirmasse, Deo et Sanctæ Ecclesiæ, et omnibus comitibus et baronibus, et omnibus hominibus meis, omnes consuetudines, quas rex Henricus, avus meus, eis dedit et concessit. Similiter etiam omnes malas consuetudines, quas ipse delevit et remisit, ego remitto et deleri concedo, pro me, et hæredibus meis.

Quare volo et firmiter præcipio, quod Sancta Ecclesia, et omnes comites et barones, et omnes mei homines, omnes illas consuetudines, et donationes, et libertates, et liberas consuetudines, habeant, et teneant libere et quiete, bene et in pace, et integre, de me et hæredibus meis, sibi et hæredibus suis, adeo libere, et quiete, et plenarie, in omnibus, sicut rex Henricus, avus meus, eis dedit et concessit, et cartâ suâ confirmavit.

Teste Ricardo de Luci.

VOL. IV.

Z

N^o II.

N° II.

*Petri Blessensis Epist.**Ep. LXVI. Ad Gualter Archiepiscopum Panormitanum.*

This is referred to in p.
16. 144, 145,
146, 147,
148, 149,
150. vol. ii.

BENEDICTUS Dominus Deus &c. &c.

Quod autem à me cum omni instantia postulatis, ut formam et mores domini regis Angliæ vobis sub certa descriptione transmittam, meas quidem facultates excedit: ad hoc enim satis insufficiens videretur Mantuani vena ingenii. Ego tamen quod scio vobis sine invidia et detractatione communico. De David legitur, ad commendationem decoris ejus, quoniam rufus erat. Vos autem dominum regem subrufum hæcenus extitisse noveritis, nisi quia colorem hunc venerabilis senectus, et superveniens canities aliquantulum alteravit. Statura ejus mediocris est, ut et inter parvos magnus appareat, nec inter majores minimus videatur. Caput ejus sphaericum est, tanquam sapientiæ magnæ sedes, et alti consilii speciale sacrarium. Ea vero est capitis quantitas, ut collo et toti corpori proportionali moderatione respondeat. Oculi ejus orbiculati sunt, dum pacati est animi, columbini et simplices: sed in ira et turbatione cordis quasi scintillantes ignem et in impetu fulminantes. Cæsaries ejus damna calvitii non veretur, superveniente tamen artificii capillorum tonsura. Leonina facies quasi in quadrangulum se dilatat. Eminentia naris ad totius corporis venustatem naturali est moderatione propensa. Arcuati pedes, equestres tibiæ, thorax extensior, lacerti pugiles virum fortem, agilem, et audacem denunciant: in quodam tamen articulo pedis ejus pars unguis innascitur carni, atque in contumeliam totius pedis vehementer increfcit. Manus ejus quadam grossitie sua hominis incuriam protestantur. Earum enim cultum prorsus negligit; nec unquam, nisi aves deferat, utitur chyrothecis. Singulis diebus in missis, in consiliis, et aliis publicis actionibus regni. Semper à mane usque ad vesperam stat in pedes. Et licet tibiæ habeat frequenti percussione calcitrantium equorum enormiter vulneratas et lividas, nisi tamen equitet, vel comedat, nunquam sedet. Una die, si opus fuerit, quatuor aut quinque diætas excurrit, et sic, inimicorum machinamenta præveniens, artes eorum frequenter inopinata subitatione deludit. Ocreis sine plica, pileis sine fastu, et vestibis utitur expeditis. Vehemens amator nemorum, dum cessat à præliis, in avibus et canibus se exercet. Caro siquidem ejus se mole pinguedinis enormiter onerasset, nisi quia ventris insolentiam jejuniis et exercitio domat, atque in ascendendo equum, et in excurrando, levitatem adolescentiæ

adoleſcentiæ fervans potentiffimos ad laborem ſingulis fere diebus itinerrando fatigat. Non enim, ſicut alii reges, in palatio ſuo jacet, ſed per provincias currens explorat facta omnium, illos potiſſime judicans, quos conſtituit judices aliorum. Nemo eſt argutior in conſiliis, in eloquio torrentior, ſecurior in periculis, in proſperis timidior, conſtantior in adverſis. Quem ſemel dilexit, vix dediligit: quem vero ſemel exoſum habuit, vix in gratiam familiaritatis admittit. Semper in manibus ejus ſunt arcus, enſes, venabula, et ſagittæ; niſi ſit in conſiliis, aut in libris. Quoties enim poteſt a curis et ſolicitudinibus reſpirare, ſecreta ſe occupat lectione, aut in cuneo clericorum aliquem nodum quæſtionis laborat evolvere. Nam cum rex veſter bene literas noverit, rex noſter longe literatior eſt. Ego enim in litterali ſcientia facultates utriuſque cognovi. Scitis, quod dominus rex Siciliæ per annum diſcipulus meus fuit, et qui à vobis verſificatoriæ atque litteratoriæ artis primitias habuerat, per induſtriam et ſolicitudinem meam beneficium ſcientiæ plenioris obtinuit. Quam cito autem egreſſus ſum regnum, ipſe libris abjectis ad otium ſe contulit palatinum.

Verumtamen apud dominum regem Anglorum, quotidiana ejus ſchola eſt litteratiſſimorum converſatio jugis, et diſcuſſio quæſtionum. Nullus rege noſtro eſt honeſtior in loquendo, in comedendo urbanior, moderatior in bibendo. Nullus magnificentior in donis, nullus munificentior in eleemoſynis: ideoque quaſi unguentum effuſum eſt nomen ejus, et eleemoſynas illius enarrat omnis Eccleſia Sanctorum. Rex noſter pacificus, victorioſus in bellis, glorioſus in pace: ſuper omnia deſiderabilia hujus mundi zelatur et procurat pacem populi ſui. Ad pacem populi ſpectat immenſitas illa pecuniarum, quam donat, quam recipit, quam congregat, quam diſpergit. In muris, in propugnaculis, in munitionibus, in foſſatis, in clauſuris ferarum et piſcium, et in palatiorum ædificiis nullus ſubtilior, nulluſque magnificentior invenitur. Pater ejus, potentiffimus et nobiliſſimus comes, fines ſuos ampliffime dilatavit: ſed iſte patris facultatibus ſupperaddens in fortitudine manus ſuæ ducatum Normanniæ, ducatum Aquitaniæ, ducatum Britanniæ, regnum Angliæ, regnum Scotiæ, regnum Hybernæ, regnum Walliæ, paternæ magnificentiæ titulos inæſtimabiliter ampliavit. Nullus manſuetior eſt afflictis, nullus affabilior pauperibus, nullus importabilior eſt ſuperbis: quadam enim divinitatis imagine ſemper ſtudit opprimere faſtuosos, oppreſſos erigere, et adverſus ſuperbiæ tumorem continuas perſecutiones et exitiales moleſtias ſuſcitare. Cum autem juxta regni conſuetudinem in electionibus faciendis potiſſimas et potentiffimas habeat partes, habuit tamen ſemper manus ab omni venalitate innoxias et immunes. Has et alias tam animi quam

corporis dotes, quibus ipsum natura egregie præ cæteris insignivit, tango summotenus, non describo: meam enim profiteor insufficientiam, crederemque sub tanta sudare materia Tullium, aut Maronem. Illud sane tantillum, quod de forma et moribus ejus, ad instantiam vestram, breviter delibavi, mihi temeritati à pluribus adscribetur: videbor enim, aut onus importabile præsumpsisse, aut plurimum de magnificentia tanti viri per invidentiam recidisse. Ego tamen vestræ serviens caritati, quod possum facio, et quod scio vestræ postulationi promptissima voluntate communico, atque inter cæteros magnificos viros, qui de laudibus domini mei scribunt, ego cum paupere vidua minutum devotionis gazophylacium mitto. Quod autem de morte beati martyris quæritis, in verbo domini et in ordine diaconi vobis dico, me nullo modo habere in conscientia, ipsum hujus rei culpabilem exstitisse: hujusque fidem plenissimam vobis facient dominus Theodinus Portuensis episcopus, et dominus Albertus Cancellarius, qui propter hoc in partibus nostris legatione fungentes exploraverunt, et innocentiam viri cognoverunt, atque sub umbra illius hoc a quibusdam attentatum fuisse, totamque hanc iniquitatem à sanctuario processisse. Accepta siquidem ab eis canonica purgatione illius, illi de mandato summi pontificis publice sententiaverunt, eum ab hoc crimine coram Deo et hominibus esse innoxium, et in quosdam magnates, quorum malitiam in hac parte manifeste convicerant, notam infamiæ retulerunt. Illud quoque noveritis, dominum regem gloriosum martyrem in omnibus angustiis suis patronum habere præcipuum. Eadem siquidem die, qua primo tumultum martyris visitavit, regem Scotiæ, persecutorem et impugnatorem fortissimum, captum vinculis carceralibus mancipavit. Continuatoque deinceps favore successuum ope martyris de universis hostibus gloriosissime triumphavit. Sciatis igitur certissime, quod caritatem illam, qua se olim rex et martyr mutuo dilexerunt, neque mors neque gladius abolevit: fortis enim est dilectio, ut mors: et cum omnia transeant, caritas nunquam excidit. Hæc est porta speciosa, quæ in subversione Hierusalem integra et intacta permanfit: cumque omnia evacuentur in morte, dilectio in morte non moritur, cujus fortitudini mors succumbit. Regnum quidem Angliæ, quod adversus regem Stephanum armis strenuissimum sudoribus obtinuerat bellicis, licet adolescentulus et contemptus, filii ejus, consilio et auxilio regum et principum circumjacentium, gravi seditione turbaverant. Ipse autem destitutus suis, et ab extraneis impugnatus, illo aspirante, in cujus virtute unus fugat decem millia, prævaluit universis, deditque in manus ejus hostes suos Dominus, ad alligandos reges eorum in compedibus, et nobiles eorum in manicis ferreis. Ille, qui convertit corda filiorum ad patrem, ipsos in affectione

affectione filiali nutrienda sedem patris in tempora longa stabiliat, et faciat pacem. Scio enim, quod si bella iterum suscitaverint in parentem, succidet eos dominus. Nam Dei iudicio et lege fatali sancitum est, ut quicumque de consanguinitate illius bellis ipsum impugnare præsumpserit, non dimidiet dies suos. Hoc autem in libro experientiæ jam de multis legimus, et fide oculata cognovimus.

N° III.

Harley, part 215. fol. 2. 6—36.

NOTUM sit omnibus tam præsentibus quam futuris, quod hoc modo facta pax inter Lodowicum regem Francie, et regem Anglie Henricum. Rex Lodowicus reddidit regi Anglie omnia jura, et tenementa Henrici regis avi sui, que tenebat die, qua fuit vivus ac mortuus, plene et integre; excepto Wilcassino. Et de Wilcassino remansit regi Anglie feodum archiepiscopi Rotomag', et feodum comitis ligicum de feodo Britollii, et feodum comitis Ebr'. Et totum remanens Wilcassini regi Francie; hoc modo, quod ipse illud remanens dedit, et concessit maritagium cum filia sua filio regis Anglie habendum. Et eum inde seisiendum, ab assumptione beate Marie proxima post pacem factam, in tres annos, et si infra hunc terminum filia regis Francie filio regis Anglie desponsata fuerit, assensu et consensu Sancte Ecclesie, tunc erit rex Anglie seysitus de toto Wilcassino, et de Castellis Wilcassini, ad opus filii sui. Et si filia regis Francie infra hunc terminum obierit, Castella et Wilcassinum redibunt ad manum regis Francie; exceptis tribus feodis, que semper remanebunt regi Anglie soluta et quieta. Et ista conventionem, quod Castella remanebunt in custodia militum Templi, usque ad prædictum terminum: et habebunt redditus ad Castella custodienda, quæ rex Francie in dominio habebat. Et interim, rex Francie habebit inde justiciam, et homagia, et servitium. Et Gocelinus Crispinus, et Goellius de Vaudemonte reversi sunt in homagia regis Francie, de eo quod habent in Wilcassino, et debent habere de ipso. Et si rex Francie habuerit querelam versus eos, que sit ad justiciam corporis, vel membrorum, sive exheredacionem, sive magnum gravamen pecunie, per consilium regis Anglie deducetur. Per istam convencionem Castellum Stipinnei prosteretur, infra festum Sancti Johannis. Comes Ebr' Simon reversus est in homagium regis Francie; et servitium quiete in hominibus et castellis suis, et castella sua ei quieta remanebunt; sicut ceteri barones Francie

This is referred to in p. 102. vol. ii.

Francie castella sua quieta habent. Et rex solvit, et quietos clamavit homines ejusdem comitis omnes, à juramento quod ei fecerunt: et ipsum comitem similiter absolvit, de eo quod ad regem Francie pertinet. Et idem comes Ebr' habebit omnia jura sua de foresta Aquiline, sicut jurata fuerunt per servientes regis Francie, et ipsius comitis. Sed si inter eos orta fuerit querela, per juramenta hominum et regis et comitis, qui hoc juraverunt, ex precepto regis, et sine mala voluntate ejus recognitum erit. Et de domo Sancti Leodegarii, si comes eum requisierit, de custodia ejusdem domus rex ei rectum tenebit. Præterea rex Francie reddidit regi Anglie omnia jura et tenementa comitis Pictavenfis, excepta Tolosa; hoc modo, quod rex Anglie concessit de Tolosa trevias, usque die primo Pentecost post pacem, in unum annum, pro amore regis Francie, comiti Sancti Egidii; salvo honore suo, sine malo ingenio, et sine sua et suorum heredum exheredacione. Et quicquid rex Anglie habebat de honore Tolose, et Cadurco, et Cadurcino, ea die qua pax facta fuit, eidem regi Anglie remanebit; et si comes Sancti Egidii infra hunc terminum regi Anglie, vel suis hominibus, de predicto honore Tolose, vel Cadurci, forisfecerit, et ad marchia in termino convenienti non emendaverit, rex Francie inde ulterius se non intromittet. Et si comes de Bargelim' et Trencavel', et ceteri homines regis Anglie illius patrie, noluerant in trewis istis esse, et gwerram fecerint comiti Sancti Egidii, rex Anglie non juvabit eos infra hunc terminum contra istam conventionem.

Concedo et confirmo hiis testibus: Petro Parisiac', Hugone Suefoinenf', Roberto Ebroic', Ernaldo Exc', Philippo Baiocenf', Rogero Sagiensi, Hugone Dunelm' Episcopo, Thoma Cancellar', Comite Flandrenf', Teodorico Comite, Henrico Comite Suefionenf', Comite Belli Montis, Teodor' Wileriano, Willelmo Pavet, Magistro Templi et Fratribus, Otton'. de Sancto Ludonir', Giliberto de Laci, Ricardo de Hastig', Petro Episcopo, Roberto de Piro, Willelmo fratre regis Anglie, Comite Millet'ino, Ricardo de Humet, Jordano Taxo.

Nº IV.

Judicia Civitatis Lundoniæ, p. 71. Wilkins Leges Anglo-Saxonice.

This refers to
p. 173. vol. ii.

ET si mercator tamen sit, qui ter trans altum mare per facultates proprias abeat, ille postea jure Thani sit dignus.

Nº V.

N^o V.

Madox's History of the Exchequer, p. 174. ch. vii. note e.

JOHANNES Dei gratia &c. Sciatis nos concessisse omnibus Judæis Angliæ et Normanniæ libere et *honorifice* habere residentiam in terra nostra, et omnia illa de nobis tenenda quæ tenuerunt de rege H. avo patris nostri, et omnia illa quæ modo rationabiliter tenent, in terris, feodis, et vadiis, et akatis suis, et quod habeant omnes libertates et consuetudines suas, sicut eas habuerunt tempore prædicti regis H. avi patris nostri, melius et quietius et *honorabilius*. Et si querela orta fuerit inter Christianum et Judæum, ille qui alium appellaverit, ad querelam suam dirationandam habeat testes, scilicet legitimum Christianum et legitimum Judæum. Et si Judæus de querela sua breve habuerit, breve suum erit ei testis. Et si Christianus habuerit querelam adversus Judæum, sit judicata per pares Judæi. Et cum Judæus obierit, non destineatur corpus suum super terram, sed habeat hæres suus pecuniam suam et debita sua, ita quod inde non disturbetur, si habuerit hæredem qui pro ipso respondeat, et rectum faciat de debitis suis et de forisfacto suo. Et liceat Judæis omnia quæ eis apportata fuerint sine occasione accipere et emere, exceptis illis quæ de ecclesia sunt et panno sanguinolento. Et si Judæus ab aliquo appellatus fuerit sine teste, de illo appellatu erit quietus solo sacramento suo super librum suum. Et de appellatu illarum rerum quæ ad coronam nostram pertinent similiter quietus erit solo sacramento suo super rotulum suum. Et si inter Christianum et Judæum fuerit dissensio de accommodatione alicujus pecuniæ, Judæus probabit cattallum suum et Christianus lucrum. Et liceat Judæo quiete vendere vadium suum, postquam certus erit eum illud unum annum integrum et unum diem tenuisse. Et Judæi non intrabunt in placitum nisi coram nobis, vel coram illis qui turres nostras custodierint, in quorum ballivis Judæi manserint. Et ubicunque Judæi fuerint, liceat eis ire quocunque voluerint cum omnibus catallis eorum sicut res nostræ propriæ, et nulli liceat eos retinere neque hoc eis prohibere. Et præcipimus quod ipsi quieti sint per totam Angliam et Normanniam de omnibus consuetudinibus, et theloniis, et modulatione vini, sicut nostrum proprium cattallum. Et mandamus vobis et præcipimus, quod eos custodiatis, et defendatis, et manuteneatis. Et prohibemus ne quis contra cartam istam de hiis prædictis eos in placitum ponat, super forisfacturam nostram, *sicut carta regis*

This refers to
p. 308, 309.
vol. ii.

regis H. patris nostri rationabiliter testatur. Testibus Gaufrido filio Petri Comite Essexiæ, Willielmo Marefcallo Comite de Penbroc, Henrico de Bohun Comite de Hereford, Roberto de Turnham, Willielmo Briwer, &c. Datum per manum S. Wellensis Archidiaconi apud Merleberg, decimo die Aprilis, anno regni nostri secundo.

Rot. Cart. 2. Job. n. 49. titulo Carta Judæorum Angliæ.

Nº VI.

Charta Regis Willielmi Conquest. de legibus boni Regis Edwardi Conf. stabiliendis; facta in vit. ante ann. ejus 4. Domini nostri 1070, precibus Willielmi London. Episcopi, qui dicto anno obiit.

This and the two following charters of Hen. I. and Hen. II, are referred to in p. 313. vol. ii.

WILLIELMUS Rex salutatur Willielmum Episcopum, et Godfridum Portegresium, et omnem Burghware, infra London. Franc. et Angl. amicabiliter. *Et vobis notum facio, quod ego volo quod vos sitis omni lege illâ digni quâ fuistis Edwardi diebus regis. Et volo quod omnis puer sit patris sui hæres post diem patris sui*. Et ego nolo pati, quod aliquis homo aliquam injuriam vobis inferat. Deus vos salvet.*

Nº VII.

Wilkins Leges Anglo-Saxon, p. 235.

HENRICUS Dei gratia rex Angliæ, Archiepiscopo Cantuariæ, et Episcopis, et Abbatibus, et Comitibus, et Baronibus, et Justitiariis, et Vicecomitibus, et omnibus fidelibus suis Francis et Anglicis totius Angliæ, Salutem. Sciatis me concessisse civibus meis *London* tenend' *Middlesex* ad firmam pro ccc. libr' ad compotum ipsius et hæredibus suis, de me et hæredibus meis, ita quod ipsi cives ponent vicecom' qualem voluerint de seipsis et justitiar' qualem voluerint de seipsis ad custodiend' placita coronæ meæ et eadem placitanda, et nullus alius erit justitiarius

* By the clauses markt in Italicks I understand that the benefit of all the laws of King Edward, or those they enjoyed in his time, was confirmed to the magistrates and citizens of London, and the right of inheritance to their children, so as not to be forfeited by any offences of the fathers. They are strangely translated by Dr. Brady.

super ipsos homines *London*, et cives non placitabunt extra muros civitatis pro nullo placito, et sint quieti de *eschot* et de *danegildo* et de *murdro*, et nullus eorum *faciat bellum* *. Et si quis civium de placitis coronæ implacitatus fuerit per sacramentum quod judicatum fuerit in civitate, se distracionet homo *London*, et intra muros civitatis nullus hospitetur, neque de mea familia, neque de alia, vi alicui hospitium liberetur. Et omnes homines *London* sint quieti et liberi, et omnes res eorum per totam Angliam et per portus maris de *thelonio* et *passagio* et *lestageio* (*lastagio*), et omnibus aliis consuetudinibus; et ecclesiæ et barones, et cives teneant et habeant bene et in pace focnas suas cum omnibus consuetudinibus, ita quod hospites, qui in focis suis hospitantur, non dent consuetudines suas, nisi illi cujus focca fuerit vel ministro suo quem ibi sibi posuerit. Et homo Londoniarum non judicetur in misericordia pecuniæ, nisi in sua Were, scilicet ad c solid. Dico de placito quod ad pecuniam pertineat. Et amplius non sit *miskennunga* in *bustenge*, neque in *folkesmote*, neque in aliis placitis intra civitatem. Et *busting* sedeat semel in ebdomada, videlicet, die Lunæ: et terras suas, et *wardemotum*, et debita civibus meis habere faciam intra civitatem, et extra. Et de terris de quibus ad me clama-verint rectum eis tenebo lege civitatis. Et si quis *thelonium* vel consuetudinem à civibus *London* ceperit, cives *London* capiant de burgo, vel de villa, ubi *theloneum* vel consuetudo capta fuit, quantum homo *London* pro *thelonio* dedit, et proinde de dampno ceperit. Et omnes debitores qui civibus debita debent, eis reddant, vel in *London* se distracionent quod non debent. Quod si reddere noluerint, neque ad distracionandum venire, tunc cives quibus debita sua debent capiant intra civitatem namia sua, vel de comitatu in quo manet qui debitum debet. Et cives habeant fugationes suas ad fugandum, sicut melius et plenius habuerunt antecessores eorum, scilicet *Ciltre*, et *Midlesex*, et *Sureie*. Teste Episcopo Winton', Rob. fil' Richer, et Hug. Bigot, et Alver' de Toneis et Willielmo Albini, et Huberto Regis Camerar' et Willielmo de Montfichet, et Hagulfo de Tani, et Joh' Delet, et Rob. fil. Siwa.

Dat. apud Westm'.

* This means exemption from the Norman trial by *Duel*.

N. B. I have corrected some words of the transcript of this Charter as it is given by Wilkins in his Anglo-Saxon Laws, from the various readings in his notes; and in some places I have altered the stops which he has put to it, or inserted a copulative, in order to make a better and clearer sense. Some passages seem still to want a further correction.

N° VIII.

Ibid. p. 319.*Carta Libertatum Regis Henrici secundi, Londoniensibus concessarum.*

HENRICUS Dei gratia &c. Archiepiscopis, Episcopis, Abbatibus, Baronibus, Justitiis, Vicecomitibus, Ministris, et omnibus fidelibus suis, Francis et Anglis, Salutem.

Sciatis, me confirmasse civibus meis *London.* quod nullus eorum placitet extra muros civitatis *London.* de ullo placito præter placita de tenuris exterioribus, exceptis meis monetariis, et ministris meis.

Concessi etiam eis quietantiam murdri infra urbem et portsocna : et quod nullus faciet bellum : et quod de placitis ad coronam se possunt distracionare secundum antiquam consuetudinem civitatis : et quod intra muros nemo capiat hospitium per vim, vel per liberationem marescalli.

Hoc etiam eis concessi, quod omnes cives *Londoniarum* sint quieti de thelonio et lestagio per totam Angliam, et per portum maris : et quod nullus de materia pecuniæ judicetur, nisi secundum legem civitatis, quam habuerunt tempore Henrici avi mei : et quod in civitate in nullo placito sit *miskeninga* : et quod *bustingus* semel tantum in hebdomada teneatur : et quod terras suas, et tenuras, et vadimonia, et debita omnia juste habeant, quicunque eis debeat ; et de terris suis et tenuris, quæ infra urbem sunt, rectum eis teneatur secundum legem civitatis, et de omnibus debitis suis quæ accommodata fuerint apud *London.* et de vadimoniis ibidem factis, placita apud *London.* teneantur. Et si quis in tota Anglia theloneum vel consuetudinem ab *London.* ceperit, postquam ipse a recto defecerit, vicecomes *London.* namium inde apud *London.* capiat. Concedo etiam eis, quod habeant fugationes suas, ubicunque eas habuerunt tempore regis Henrici, avi mei.

Insuper etiam ad emendationem civitatis eis concessi, quod sint quieti de Brud toll, et de Childwyte, et de Yarasgive, et de Scotale ; ita quod vicecomes meus *London.* vel aliquis alius Ballivus Scotale non faciat.

Has prædictas consuetudines eis concedo, et omnes alias libertates quas habuerunt tempore Henrici regis, avi mei.

Quare volo et firmiter præcipio, quod ipsi et hæredes eorum hæc prædicta omnia hæreditarie habeant et teneant de me et hæredibus meis. Hijs testibus, Archiepiscopo Cantuariæ, Episcopo *London.*

Nº IX.

Madox's History of the Exchequer, p. 276. ch. xi. note g.

JOHANNES Dei gratia &c. Sciatis nos concessisse, et præsentem This is referred to in p. 317. and 318. vol. ii. carta confirmasse, burgenſibus noſtris de Dunewichge, quod burgum de Dunewichge ſit liberum burgum noſtrum; et habeat foccam, et ſaccam, et toll, et theam, et infangentheſ; et quod ipſi per totam terram noſtram quieti ſint de thelonio, et leſtagio, et paſſagio, et pontagio, et ſtallagio, et de leue, et de danegeld, et de ewagio, de wrec et lagan, et de omnibus aliis conſuetudinibus; ſalva libertate civitatis Londoniæ; et quod ipſi rectam et ſolitam firmam ſuam per manum ſuam reddant ad ſcaccarium noſtrum; et quod nullam ſectam faciant comitatum vel hundredorum, niſi coram juſticiariis noſtris; et cum ſummoniti fuerint eſſe coram juſticiariis, mittant pro ſe xii legales homines de burgo ſuo, qui ſint pro eis omnibus; et ſi forte ameriari debuerint, per ſex probos homines de burgo ſuo et per ſex probos homines extra burgum amerientur. Conceſſimus etiam eis, quod filios et filias ſuas poſſunt libere ubi voluerint in terra noſtra maritare, et viduas ſimiliter per conſilium amicorum ſuorum; et perquiſitiones ſuas de terris et edificiis in villa ſua poſſint dare aut vendere, aut facere inde quod voluerint et quando voluerint. Conceſſimus etiam eis Hanſam et Gildam mercatoriam, ſicut habere conſueverunt. Quare volumus et firmiter præcipimus, quod prædicti burgenſes noſtri prænomiſſas libertates et liberas conſuetudines habeant et teneant, libere pacifice et integre, ſine omni impedimento.

T. E. Elyenſi Epifcopo. Willielmo Mareſcallo &c. Data per manum H. Cantuarienſis Archiepiſcopi, Cancellarii noſtri, apud Rupem Aurivallis xxix die Junii anno r. n. primo.

Rot. Cart. 1 Job. p. 2. n. 164.

N° X.

*Royal 4. 1. xi. Master Wace writes thus concerning the Fleet
of William the Conqueror. Fol. 17. b.*

NE vos voil mie metre en letre,
Ne io ne men voil entremetre :
Quels barons et quanz chevaliers
Quanz vavafors et quanz foldeiers
Out li duc en sa compaignie,
Quant il out prist tout son navie.
Mais io oi dire à mon pere,
Bien men souvient, mais vasset ere,
Que sept cenx nes, quatre moins, furent
Quant de Saint Valeri s'esmurent,
Que nes, que batels, que esqueis,
A porter armes et herneis.
Et io ai en escrit trové,
(Ne fais dire s'est verité :)
Que il y out treis mil nès
Qui portèrent voiles et tres.
A tantes nès pout lon savoir :
Que mult i pout grant gent avoir.

Speaking of Taillefer, he says,

Devant le duc aloit chantant
De Karlemaigne, et de Rollant,
D'Olivier, et del vassals
Qui moururent en Roncevals.

A P P E N D I X

TO THE

T H I R D B O O K

OF THE

History of the Life of King Henry the Second.

VOLUME II.

N^o I.

*Extract from the Remonstrance of the Parliament of Paris to
the King of France, of the 9th of April 1753.*

DES Ecclesiastiques redoublent leurs efforts pour affermir une
système d'indépendance, dont les fondemens ont été posés il y a
près de mille ans, dont les principes ont été liés, développés, et
suivis, de siècle en siècle, dans la conduite de plusieurs ministres de l'église;
et dont les effets inevitables, sans la vigilance et la fermeté des magi-
strats, seroient l'abus le plus enorme de votre auguste nom, ainsi que de
la religion, l'aneantissement du bon ordre et du repos public, des jurif-
dictions réglées, des loix, de votre souveraineté même, et, par conséquent,
de l'état entier.

This refers to
the first page
of Book iii.

N^o II.

N^o II.

Constitutions of Clarendon, from the Cottonian Manuscript of Becket's Life and Epistles, which is probably the most ancient and correct Copy of those Statutes.

MS. Cotton. Claud. B. fol. 26.

This refers to
book iii. page
354 and 397.

ANNO ab Incarnatione Domini millesimo centesimo sexagesimo quarto, papatus Alexandri anno quarto, illustrissimi regis Anglorum Henrici II. anno decimo, in presentia ejusdem regis, facta est ista recordatio vel recognitio cujusdam partis consuetudinum, et libertatum, et dignitatum antecessorum fuorum, videlicet regis Henrici, avi sui, et aliorum, quæ observari et teneri debent in regno. Et propter dissensiones et discordias, quæ emerferant inter clerum et justicias domini regis, et barones regni, de consuetudinibus et dignitatibus regni, facta est ista recognitio coram archiepiscopis et episcopis et clero, et comitibus et baronibus et proceribus regni. Et easdem consuetudines recognitas per archiepiscopos et episcopos, et comites et barones, et per nobiliores et antiquiores regni, Thomas Cantuariensis archiepiscopus et Rogerus Eboracensis archiepiscopus, et Gilbertus Londoniensis episcopus, et Henricus Wintoniensis episcopus, et Nigellus Eliensis episcopus, et Wilhelmus Norwicensis episcopus, et Robertus Lincolnensis episcopus, et Hilarius Cices-trensis episcopus, et Joselinus Sarisberiensis episcopus, et Richardus Cestrensis episcopus, et Bartholomeus Exoniensis episcopus, et Robertus Herefordensis episcopus, et David Menevensis episcopus, et Rogerus Wigornensis electus, concesserunt, et in verbo veritatis viva voce firmiter promiserunt, tenendas et observandas domino regi et heredibus suis, bona fide, et absque malo ingenio, presentibus istis: Roberto comite Leghestrie, Reginaldo comite Cornubie, Conano comite Britannie, Johanne comite de Augo, Rogerio comite de Clara, comite Gaufrido de Mandevilla, Hugone comite Cestrie, Wilhelmo comite de Arundel, comite Patricio, Wilhelmo comite de Ferrariis, Richardo de Luci, Reginaldo de Sancto Walerico, Rogerio Bigod, Reginaldo de Warennis, Rogerio de Aquila, Wilhelmo de Braosia, Richardo de Camvilla, Nigello de Mobrai, Simone de Bello-Campo, Hunfrido de Boun (Bohun), Matheo de Herefordia, Waltero de Meduana, Manassero Biseth dapifero, Wilhelmo Malet, Wilhelmo de Curci, Roberto de Dunestavilla, Joselino de Lanvalis, Wilhelmo de Caisneto, Gaufrido de Ver, Wilhelmo de Hastings, Hugone

Hugone de Moravilla, Alano de Nevilla, Simone filio Petri, Wilhelmo Maudut camerario, Johanne Maudut, Johanne Marischallo, Petro de Mara, et multis aliis proceribus et nobilibus regni, tam clericis quam laicis.

Consuetudinum vero et dignitatum regni recognitarum quædam pars presenti scripto continetur. Cujus partis capitula hæc sunt.

(Incipiunt consuetudines quas avitas vocant*.)

I. De advocacione et præsentatione ecclesiarum, si controversia emerferit inter laicos, vel inter clericos et laicos, vel inter clericos, in curia domini regis tractetur vel terminetur.

II. Ecclesiæ de feudo domini regis non possunt in perpetuum dari sine assensu et concessione ipsius.

III. Clerici rectati, et accusati de quâcunque re, summoniti a justitia regis venient in curiam ipsius, responsuri ibidem de hoc unde videbitur curiæ regis quod sit ibi respondendum, et in curia ecclesiastica unde videbitur quod ibidem sit respondendum, ita quod justitia regis mittet in curiam sanctæ ecclesiæ ad videndum qua ratione res ibi tractabitur. Et si clericus convictus vel confessus fuerit, non debet de cætero eum ecclesia tueri.

IV. Archiepiscopis, episcopis, et personis regni non licet exire de regno absque licentia domini regis. Et si exierint, si domino regi placuerit, affecurabunt quod nec in eundo, nec in moram faciendo, nec in redeundo perquirent malum vel dampnum regi vel regno.

V. Excommunicati non debent dare vadium ad remanens, nec præstare juramentum, sed tantum vadium et plegium standi judicio ecclesiæ ut absolvantur.

VI. Laici non debent accusari nisi per certos et legales accusatores et testes in præsentia episcopi, ita quod archidiaconus non perdat jus suum, nec quicquam quod inde habere debeat. Et si tales fuerint qui culpantur, quod non velit vel non audeat aliquis eos accusare, vicecomes requisitus ab episcopo faciet jurare duodecim legales homines de vicineto, ceu de villa, coram episcopo, quod inde veritatem secundum conscientiam suam manifestabunt.

VII. Nullus qui de rege tenet in capite, nec aliquis dominicorum ministrorum ejus, excommunicetur, nec terræ alicujus eorum sub interdicto ponantur, nisi prius dominus rex, si in terra fuerit, conveniatur, vel justitia ejus, si fuerit extra regnum, ut rectum de ipso faciat, et ita, ut quod pertinebât ad curiam regiam ibidem terminetur, et de eo quod spectabit ad ecclesiasticam curiam ad eandem mittatur, ut ibidem terminetur.

VIII. De appellationibus, si emerferint, ab archidiacono debent procedere ad episcopum, et ab episcopo ad archiepiscopum. Et si archie-

* These words seem to have been inserted by the Monk who made the transcript.

piscopus defecerit in iusticia exhibenda, ad dominum regem perveniendum est postremo, ut præcepto ipsius in curia archiepiscopi controversia terminetur, ita quod non debet ulterius procedere absque assensu domini regis.

IX. Si calumpnia emerferit inter clericum et laicum, vel inter laicum et clericum, de ullo tenemento, quod clericus ad eleemosinam velit attrahere, laicus vero ad laicum feudum, recognitione duodecim legalium hominum per capitalis iusticiæ regis considerationem terminabitur, utrum tenementum sit pertinens ad eleemosinam, five ad feudum laicum, coram ipsa iusticia regis. Et si recognitum fuerit ad eleemosinam pertinere, placitum erit in curia ecclesiastica; si vero ad laicum feudum, nisi ambo tenementum de eodem episcopo vel barone advocaverint, erit placitum in curia regia. Sed, si uterque advocaverit de feudo illo eundem episcopum vel baronem, erit placitum in curia ipsius. Ita quod propter factam recognitionem seisinam non amittat qui prior seisitus fuerat, donec per placitum dirationatum fuerit.

X. Qui de civitate, vel castello, vel burgo, vel dominico manerio domini regis fuerit, si ab archidiacono vel episcopo super aliquo delicto citatus fuerit unde debeat eisdem respondere, et ad citationes eorum satisfacere noluerit, bene licet eum sub interdicto ponere: sed non debet excommunicari priusquam capitalis minister domini regis villæ illius conveniatur, ut iusticiet eum ad satisfactionem venire. Et si minister regis inde defecerit, ipse erit in misericordia domini regis, et exinde poterit episcopus accusatum ecclesiastica iusticia cohibere.

XI. Archiepiscopi, episcopi, et universæ personæ regni qui de rege tenent in capite, habent possessiones suas de domino rege sicut baroniam, et inde respondent iusticiis et ministris regis, et secuntur [sequuntur] et faciunt omnes rectitudines et consuetudines regias, et, sicut barones cæteri, debent interesse judiciis curiæ domini regis cum baronibus, usque perveniatur in iudicio ad diminutionem membrorum vel mortem.

XII. Cum vacaverit archiepiscopatus, vel episcopatus, vel abbatia, vel prioratus de dominio regis, debet esse in manu ipsius, et inde percipiet omnes redditus et exitus, sicut dominicos. Et cum ventum fuerit ad consulendum ecclesiæ, debet dominus rex mandare potiores personas ecclesiæ, et in capella ipsius domini regis debet fieri electio assensu domini regis et consilio personarum regni quas ad hoc faciendum vocaverit. Et ibidem faciet electus homagium et fidelitatem domino regi, sicut ligio domino, de vita sua, et de membris, et de honore suo terreno (salvo ordine suo) priusquam sit consecratus.

XIII. Si quisquam de proceribus regni defortiaverit archiepiscopo, vel episcopo, vel archidiacono, de se vel de suis iusticiam exhibere, dominus

rex debet eos iusticiare. Et si forte aliquis diffortiaret D. regi rectitudinem suam, archiepiscopi et episcopi et archidiaconi debent eum iusticiare ut dom. regi satisfaciat.

XIV. Catalla eorum qui sunt in foris facto regis non detineat ecclesia vel cimiterium contra iusticiam regis, quia ipsius regis sunt, sive in ecclesiis, sive extra fuerint inventa.

XV. Placita de debitis, quæ fide interpositâ debentur, vel absque interpositione fidei, sint in iusticiâ regis.

XVI. Filii rusticorum non debent ordinari absque assensu domini de cuius terrâ nati esse dignoscuntur.

Facta est etiam prædictarum consuetudinum et dignitatum recordatio regiarum à præfatis archiepiscopis, et episcopis, et comitibus, et baronibus, et nobilioribus et antiquioribus regni, apud Clarendonam, quarto die ante purificationem S. Mariæ, perpetuæ virginis, domino Henrico, cum patre suo domino rege, ibidem præsentem.

Sunt autem et aliæ multæ et magnæ consuetudines et dignitates S. matris ecclesiæ, et domini regis, et baronum regni, quæ in hoc scripto non continentur. Quæ salvæ sint S. ecclesiæ, et D. regi, et hæredibus suis, et baronibus regni, et in perpetuum inviolabiliter observentur.

Nº III.

Bibl. Cotton. Claudius, B. ii. 3. folio 92.

Thome Cantuariensi Archiepiscopo, Gillebertus Londoniensis Episcopus 126.

VENERABILI Domino et Patri in Christo Thome Cantuariensi Archiepiscopo, Gillebertus Londoniensis ecclesiæ minister, salutem.

Multiplicem nobis et diffusam late materiam, profunde Pater, et copiose rescribendo proponitis, et nos, licet super appellatione ad dominum Papam prosequenda sollicitos, vestre tamen sublimitati rescribere gravi quidem et nos graviter urgente necessitate compellitis. Emissis enim sparsim elogiis nos de toto fratrum nostrorum collegio seorsum ponitis ad convitia, ut singulariter in nos, etsi immeritos, ignominiosa congeratis et probra. Sobrii sensus hominem, gravitatis reverende personam, magistrum, ratione prelationis et dogmatis, veritati reverenter obnoxium, mirum est ad verba veritatis exarsisse tam graviter, et, velut evocatum ad

Vol. IV.

B b

coleras,

This refers to book iii. page 433, and other passages in this history.

coleras, innocentiam filii piè patri consulentem non solum non admisisse, sed et ipsius opinionem nota quadam malitie, cujus sibi minime conscius est, ejus non id exigente merito, resperfisse: unde, cum ecclesiam Dei subvertere, fas nefasque confundere, montem illum, qui ecclesia et columna Dei viventis est, non sano capite velle dejicere, ad ea que vestra sunt ambisse, et quod ab his obtinendis repulsi fuerimus, ob id vestram ecclesieque Dei pacem temere perturbasse, in bello domini terga dedisse, emissis scriptis publice denotemur, difficile est ut fileamus, ut hanc adversum nos opinionem, vel a presentibus admitti, vel indefensam future posteritati transmitti, confessionem innuente silentio, permittamus. Cum sit itaque malorum radix et origo cupiditas, ne nos hujus suspectos habeant quibus prava suadentur e facili, nos hinc jubet necessitas exordiri. Ait apostolus, Quis scit hominum occulta hominis, nisi spiritus hominis qui est in ipso? Latent quidem homines occulta hominum, et abyssum cordium de celo dominus intuetur. Ipsum ignota non transeunt, occulta non fallunt. Est enim sermo Dei vivus et efficax, penetrabiliorque omni gladio ancipiti: nec est ulla creatura invisibilis in conspectu ejus. Ipsi et coram ipso loquimur. Sub ipsius examine non vana aut ficta, sed que veritate conscientie subnixa sunt, confidenter et liberè respondemus; asserentes utique, quoniam ad ea quæ vestra sunt ambitionis stimulos nunquam vel momento sensimus. Honorem hunc nulli unquam invidimus. Nulli ad hanc gratiam munere vel obsequio, gratiâ vel favore, deservivimus, ut ad hujus fastigia culminis accessum nobis sacrilegum, quibuscunque modis aut adminiculis, aptaremus. Quis hoc melius, pater, quam vos, quis poterit liquidius estimare, quem ipsius ecclesie tunc temporis archidiaconum, et domini nostri regis electum e milibus, non consiliarium solummodo, sed cor fuisse constat et consilium; sine quo non quidem facile, sed nec erat possibile, ad hæc omnino quempiam obtinere progressum? nobis itaque quam apud vos gratiam collocavimus? num per nos, aut per alium, vestram unquam gratiam xeniis aut obsequiis attemptavimus, ut ad quod nisi per vos attingi non poterat in id ope vestra sublevaremur? Hinc vestram, pater, justum est metiri prudentiam, quales nos aliis exhibuerimus, qui nec vestre celsitudini, quam rerum summa sequebatur, ad turpe supplicare compendium, nec aliquâ favoris gratiâ unquam vel in modico blandire curavimus. Rem hoc fine concludimus, hoc nobis onus ipsi confidenter imponimus, ut sit nobis illa die repositum, si nos hujus culpe conscios in aliquo reprehendit cor nostrum. Non nostram itaque, pater, non nostrorum in vestra promotione repulsam planximus. Illo quidem die non nostra querere, sed que Domini nostri Jesu Christi; non nobis, sed ejus nomini in omnibus gloriam

riam exhiberi, toto cordis affectu desideravimus. Attendentes rem secus fieri, condoluimus. Cernentes jus ecclesie subverti, fas nefasque confundi, montis illius magni quem dicitis deorsum cacumen inflecti, sponsam Christi libertate pristinâ, sibi semper usque tunc observatâ reverenter et exhibitâ, inverecundè privari, altis utique in Domino suspiriis ingemuimus, et dolorum quos nunc experimur assiduè prelibationes et presagia certa, quâdam divini spiritus insinuatione, multi quidem in ecclesiâ Dei presensimus. Oportebat equidem ejus tunc meminisse quod scriptum est, "Difficile est ut bono peragantur exitu, que malis fuerint inchoata principiis." Ad ipsa quidem si recurramus initia, quis toto orbe nostro, quis ignorat, quis tam resupinus ut nesciat, vos, certâ licitatione propositâ, cancellariam illam dignitatem multis marcarum milibus obtinuisse, et aure hujus impulsu in portum Cantuariensis ecclesie illapsam ad ejus tandem sic regimen accessisse? quam piè, quam sanctè, quam canonicè, quo vite merito id exigente, multis quidem notum est, et stilo quodam doloris intimi bonorum est cordibus exaratum. Diem suum clauserat ille bonus et bone memorie pater noster, Theobaldus ecclesie Cantuariensis dudum archiepiscopus; et vos, qui cordis oculos in casum hunc pervigiles minime clauderatis, confestim à Normanniâ celeres in Angliam reditus habuistis. Ex intervallo directus est a domini nostri regis latere vir magnus, et sapiens moderator regni, Ricardus de Luci, quem laqueis anathematis innodatum hodie dignè sic merito honorastis. Regis hic ad omnes habebat imperium, ut Cantuarienses monachi et ecclesie ipsius episcopi suffraganei vos expeterent, vos eligerent, vos in patrem et pastorem, negotium nullâ deliberationum morâ protrahentes assumerent; alioquin iram regiam non unquam declinarent; verum se regis hostes et suorum, procul dubio, ipsis rerum argumentis agnoscerent. Quod loquimur experto novimus, attendentes ecclesiam Dei suffocari graviter, ob quod in ejus libertatem quodammodo proclamavimus, verbum ilico proscriptionis audivimus, et exilio crudeliter addicti sumus: *nec solum persona nostra, sed et domus patris mei, et conjuncta nobis affinitas, et cognatio tota. Hoc quidem calice et aliis propinatum est.* Scriptum vero est; Leo rugiet,, quis non timebit? Et illud, Ut rugitus leonis, sic terror regis. Quod tanto voluntatis impetu precipiebat rex, quod effectum compleri tanto nuncio perurgebat, in quod cordis oculos vos omnes injecisse noverant, in quod omnes vestri minis et terroribus, promissis et blanditiis, vigilanter instabant, quis negaret? Torrenti huic voluntatis et precepti regii quis resisteret? Stabat regni gladius in manu vestra, si in quem torvos oculos habebatis, terribilis in hunc et importabilis ire quodam velut igne coruscans: Ille quidem gladius quem in sancte matris ecclesie viscera vestra manus paulo ante immerferat, cum,

ad trajiciendum in Tolosam exercitum, tot ipsam marcarum milibus aperuistis. Qui ne limatus denuo per vos aptaretur ad vulnera, jussis obtemperavit ecclesia, et, declinando que metuit, simulavit se velle quod noluit. O! quam longè erant omnium corda bonorum ab hoc ipso, quam dissidentia vota! Metu tamen et impressione completum quod interminatione dirissimâ fuerat imperatum. Sic in ovile ovium, non utique per ostium, sed ascendens aliunde, introistis; et hoc, pater, introitu libertatem ecclesie, tot sibi temporum conservatam curriculum, ademistis. Que si ejus vita est, ut scribitis, ipsam utique exanimem reddidistis. Deus bone! quis horror illa die, quis omnes horror invasit, cum prognosticum illud de more conspectum et circumstantium oculis est oblatum: illud, inquam, prognosticum, quod, in futuri casus indicium, evangelistâ Mattheo quasi vaticinante, prolatum est! Ait enim Dominus ficulno non habenti fructum, Nunquam ex te fructus nascatur in sempiternum: et arefacta est continuo. Oportuisset igitur illo die non recta mandanti principi respondisse, quod oportet Deo obedire magis quam hominibus. Illo utinam die corda nostra plenè timor ejus occupasset, qui potest animam in gehennâ perdere, et non solum corpus occidere. Quod quia secus actum est, parit nobis enormitas hec erubescientiam, erubescientia confusionem, confusio penitentiam, que condignam inferet opem, ferente Domino satisfactionem; adeo ut in maxillis nostris juges lacrimæ perseverent, donec convertat Dominus captivitatem Syon, et consoletur merentes in Jerusalem, et clementie reducat oculos in desolatos Jerusalem. Interim, ut quod actum est currente stilo prosequamur, sublimationis vestre quis fructus extiterit audiamus. A pio rege nostro suscepto regni gubernaculo, ad illum usque diem ecclesia quidem sancta altâ pace floruerat, excepto quod, ut diximus, ad instaurandum in Tolosam exercitum manus vestras nimis in se graves agnoverat. De cetero, sub bono principe cuncta gaudebant, jocundissime letabantur universa; regnum sacerdotio devotum sanctè prestabat obsequium, et sacerdotio firmissimè fuleiebatur ad bonum omne regis imperium. Exercebantur in ecclesiâ gladii duo, devoto Domino Jesu famulantes obsequio. Nec sibi stabant ex adverso, nec tendentes in contrario repugnabant alterutro. Unus erat populus, et, ut scriptum est, unius labii, studens peccata persequi, gaudens vitia fortiter eradicari. Hec regni fuit et ecclesie pax; alternâ sic gratiâ fovebantur, et unanimi voluntate jungebantur. In vestrâ vero promotione gratiarum sperabamus et expectabamus augmenta: et ecce, peccatis exigentibus, illico turbata sunt universa. Virtus est, peccato, cum exsurgit, occurrere, mentisque finistros fetus ad petram, que Christus est, statim, cum nascuntur, allidere. Oportebat itaque vestram providisse prudentiam, ne dis-

fensiones

ensiones inter regnum et vos paululum in immensum excrescerent, ne de scintilla tenui in multorum perniciem tantus ignis exurgeret. Actum secus est, et ob causas, quas enumerare longum est, dissensiones adaucte sunt, inflammata est ira, et odium fortiter obfirmatum. Hec causa fuit, hinc emerfit occasio, cur ad requirendas dignitates regias, et in commune commemorandas, suum dominus rex animum applicaverit et consilium. Quarum observatio cum a nobis, et a suffraganeis ecclesie vestre exigere-
tur episcopis, eo quod in quibusdam earum ecclesie Dei videbatur liber-
tas opprimi, assensum dare recusavimus, preterquam his que salvo honore
Dei et ordine nostro poterant observari. Exigebat instanter dominus
noster rex observationes earum absolute sibi a nobis repromitti. Sed
quod libertati repugnabat ecclesie et domini pape fidelitati, a nobis ne-
quaquam potuit optineri. Ob causam hanc coacti sunt cetus, et convo-
cata concilia. Quid meminisse opus est que sunt acta Londoniis, que
denuo Oxenefordie? que gesta sunt Clarendonie ad memoriam revoce-
mus. Ubi continuato triduo id solum actum est, ut observandarum regni
consuetudinum et dignitatum a nobis fieret absoluta promissio. Ibi
quippe vobiscum stetimus quem in Domini spiritu stare fortiter estimaba-
mus. Stetimus quidem immobiles, stetimus imperterriti, stetimus in for-
tunarum dispendium, in cruciatum corporum, in subeundum exilium,
subeundum quoque, si sic Dominus permisisset, et gladium. Quis un-
quam pater filios in sua plus habuit confessione concordēs? quis unquam
plus unanimēs? Inclusi eramus omnes conclavi uno. Die vero tertio,
cum jam regni principes et omnes quidem nobiles in summas coleras ex-
arsissent, facto quidem fremitu et strepitu, conclave quo sedebamus in-
gressi, rejectis palliis, exertisque brachiis, nos taliter allocuti sunt, "Atten-
dite, qui regni statuta contemnitis, qui regis jussa non suscipitis. Non
nostre sunt manus iste quas cernitis, non nostra brachia, non hec de-
mum corpora nostra: Verum domini nostri regis hec sunt, ad omnem
ejus nutum, ad omnem ejus ulciscendam injuriam, ad omnem ejus vo-
luntatem, quecunque fuerit, jam nunc applicari promptissima. Ipsius
mandatum, quodcunque fuerit, ex sola nobis voluntate ejus erit justissi-
mum. Revocate consilium, inclinate animos ad preceptum, ut declina-
tis, dum fas est, quod jam non poterit evitari periculum." Quid ad hec?
Quis fugit? Quis terga vertit? Quis animo fractus est? Vestra nobis
exprobratur epistola, quod in die belli conversi sumus, quod ex adverfo
non ascendimus, quod nos murum pro domo Domini non opposuimus.
Judicet Dominus inter nos: Ipse judicet ob quem stetimus, ob quem ad-
minas principum flecti nequivimus: Judicet ipse quis fugerit, quis in
bello desertor extiterit. Stetit procul dubio vir nobilis, et spiritus in Do-
mino

mino constantissimi, Wintoniensis Henricus, Stetit Eliensis Nigellus, Stetit Lincolnensis Robertus, Cycestrensis Hylarius, Saresberienfis Jocelinus, Exoniensis Bartholomeus, Cestrensis Ricardus, Wigorniensis Rogerus, Herefordensis Robertus, Londoniensis Gillebertus. His omnibus percussor defuit. Hii itaque, temporalia reputantes ut stercora, pro Christo et ecclesiâ exposuerunt se et sua. Dicatur itaque quod verum est; fiat sub sole quod presentibus nobis et cernentibus actum est. Terga dedit dux militie, ipse campi ductor aufugit; a fratrum suorum collegio simul et consilio dominus Cantuariensis abscessit, et, tractatu seorsum habito, ex intervallo reversus ad nos, in hec verba prorupit. *Est domini mei voluntas ut pejerem, et ad presens subeo, et incurro perjurium, ut potero penitentiam acturus in posterum.* Auditis his, obstupuimus, et, mutuis herendo conspectibus, ad lapsum hunc, a summo, ut estimabamus, virtutis et constantie viro, suspirantes ingemuimus. Non est apud Dominum Est et non; nec ejus sperabamus sic moveri posse discipulum. Languente capite languent cito cetera membra, et ipsius infirmitas ad cetera statim membra dilabatur. Ipse quod exigebatur annuens, et dignitates regias et antiquas regni consuetudines, antiquorum memoriâ in commune propositas et scripto commendatas, de cetero se domino nostro regi fideliter observaturum in verbo veritatis absolute promittens, in vi nobis obedientie precepit, sponfione simili nos obligare. Sopita est hoc fine contentio. Sacerdotio sic est pax conciliata cum regno. Descendit Israel in Egyptum, unde cum multâ gloriâ legitur postmodum ascendisse. Nobis quoque spes magna refederat, id quod dominus noster rex ad tempus ira motus exegerat, sedato ipsius animo, ad Dei gloriam et ipsius honorem, in bonum denuo esse reformandum. Invidit paci tenere pacis ille turbator pristinus: et qui, procellis enavigatis, sperabamus tenere tum portum, aquilonis ecce flatibus compellimur in profundum. Recens erat illa in verbo veritatis regi facta promissio, vos nisi ab eo impetratâ licentiâ non discessurum a regno. Scriptum est, “Verba sacerdotis comitem semper habeant veritatem”. Illud quoque, “Quod quis dicit veritati debet, et quod promittit fidei”. Emenfis tamen diebus paucis, ventis vela commistis, et egressum a regno, rem rege penitus ignorante, procurastis. Quo audito, nemo rege plus stupuit, nemo plus doluit. Stupuit non esse completum quod fuerat a pontifice quasi juramento promissum. Doluit in se grave sciens scandalum suscitari, et illesam hactenus opinionem suam ex fugâ hac apud gentes et regna gravissime laceffiri. Quid enim veritatis ignari, quid poterant ex his aliud suspicari, quam regem regie pietatis immemorem in tyranni rabiem exarsisse, et odio Christi ministrum ejus a regno suo et dominationis sue finibus expulisse. Mallet in carne sua
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manu vestrâ vulnus gravissimum excepisse, quam hoc fame sue dispendium toto orbe Christiano per vos et vestros incurrisse. Quid plura? Aquilone vela perflante completa fuisset jam navigatio, nisi flatu meliore ceptis Auster obstitisset. Quo flante prospere, navis ad litus, unde cepit navigare, perducta est. In manus itaque regis cum vos rei deduxisset eventus, nunquid iram secutus, aut potentiam, in vos aut excessit opere, aut est quicquam locutus aspere? Absit. At benigne susceptum et veneratione quam decuit honoratum remisit ad propria, et vos in regno manere, commissam vobis ecclesiam regere, animi vestri dilectionem et dulcedinem sibi rebus ipsis ostendere, humiliter et benigne supplicando commonuit. Vix Auster detonuerat, et jam Circius fulminabat; motus animorum vix utrimque resederant, et ecce de novo emerfit unde ferventius ebullirent. Perlatum est ad vos mandatum regium, ut cuidam regni nobilium, super predio quod a vestra vendicabat ecclesia, quod justum foret exhiberetis. Qui post statutos dies ad regem reversus asseruit, se penes vos justiciam assequi nequivisse, et se id ipsum, juxta regni statuta, coram vobis, suo congruoque testium juramento, comprobasse. Quo regem prosequente diutius, et super exhibendâ sibi justiciâ quotidie supplicante, domini nostri regis ad vos est emissâ citatio, ut statuto die se vestra sublimitas sibi exhiberet, ut quod ipso mandante non egerat, eo cognoscente litemque judicio dirimente compleret. Non est a vobis hec admittenda citatio, *verum vos in hoc sibi minime paritum declaravit a vobis ad ipsum delegata responsio.* Arbitratus hoc ipso dominus rex juri suo detrahi graviter et potestati, ecclesiam regni jussit ad concilium Northamptoniam convocari. Convenit populus ut vir unus; et assidentibus sibi quorum id dignitati congruebat et ordini, quod dictum est super exspectato mandato suo in querelam adversus vos, usus, quâ decuit, modestiâ et venustate, proposuit. Porro quod intendit, fratrum vestrorum non expectato vel expetito consilio, vestra in continenti confessio confirmavit; adjiciens vos ob id non paruisse mandato, quod Johannes ille, qui regis ad vos mandatum pertulerat, in vestra presentia, non evangelio, sed tropario quodam proposito, juravisset. Est itaque dictum in commune, causam non eam esse, ob quam mandatum regium oportuisset omisisse: regnique fore consuetudinem in offensâ hujusmodi mulctâ pecuniariâ suam rem taxante misericordiâ placari regem. Paruit regie sublimitas vestra sententie, ad plenum cavens super judicati solutione. Vestram tamen non latebat prudentiam decretum illud apostolicum, quod in hunc modum expressum est, "Nullus episcopus, neque pro civili, neque pro criminali causa, apud quemvis judicem, five civilem, five militare, producatur vel exhibeatur." Et illud, "Clericus apud secularem judicem, si pulsatus

fatus fuerit, non respondeat aut proponat." Et illud Gelasii pape ad Elpidium episcopum, "Quo ausu, qua temeritate rescribis ad Ravennam te parare proficisci, cum canones evidenter precipiant, nullum omnino pontificum, nisi nobis ante visis aut consultis, ad comitatum debere contendere". Sed hec altiori forte scientia et spiritu clariore discernitis; et quia regem unctio divina sanctificat, ungitur ei manus in sanctitatem operum, brachiorum nexus in castitatem complexuum, pectus in cordis munditiam, scapule in laborum pro Christo tolerantiam, crismate caput infunditur, ut secundum Christum, a quo crisma dictum est et ejus nomine consecratum, apto semper moderamine studeat sibi credita dispensare, ipsum a ceteris secernitis, et judicem, non secularem tantummodo, sed et ecclesiasticum reputatis. Ad quod roborandum, id fortasse proponitis, quod imperiali judicio papa Leo quartus emendare voluit, si quid in subditos injuste commisit, Ludovico Augusto sic scribens: "Nos si incompetenter aliquid egimus, et in subditis juste legis tramitem non conservavimus, vestro aut missorum vestrorum cuncta terminentur examine; ne sit in posterum quod indiscretum valeat permanere." Si vobis mens ista est, discretionis vestre quam plurimum in hoc consentit opinio, ut, ob sacramenti reverentiam, regem estimet, non omnes, sed quas distinguunt, ecclesie et personarum ecclesie causas oportere discutere, et regie jurisdictionis examine terminare. Habet enim ecclesia quedam divino tantum jure, quedam, ut testantur, humano. Gradus ecclesiasticos, ordines sacros, et dignitates hiis coherentes et potestates, divino tantum jure sortitur. Unde si baptizat aut consecrat, solvit aut ligat, predicat et informat, hec tantum spiritualia sunt, collata desuper ab homine in hominem, non hominis dono, sed divino intus operante spiritu, propagata. Hunc sibi nemo sumit honorem, sed qui vocatur a Deo, tanquam Aaron. Affectaverunt hæc Chorash, Dathan, et Abiran, a Domino non vocati, et inaudita morte perierunt. Inmiscuentes se sacrificiis Jeroboam et Ozias, alter manus ariditate, alter lepra, percussi sunt. Est igitur in hiis omnibus sacerdos quilibet, ut pater, ut pastor, omni rege superior: rex, ut filius, ut discipulus, longe inferior estimatur. Si itaque rex delinquat in Deum, imitando Theodosium, conciliari studeat opera sacerdotum. Si sacerdotes se accusent alterutro, hec suo rex non usurpet justicio; sed, ne patrum verenda conspiciat, incedens retrorsum queque hujusmodi pallio laudis operiat. Sunt et ecclesie corporalia quedam divino tantum jure possessa. In his decime numerantur, oblationes, et primitie, quae segregando sibi sanctificavit dominus, et in usus sibi ministrantium eterna lege sancivit. Que quia divino tantum jure percipit, ad cognoscendum super his potestas se regia non extendit. Humano vero jure multa possidet, que sola

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sibi sunt hominum donatione concessa, non id precipiente Domino, vel legem super hoc statuente, ut jam non Leviticâ solum portione sit limitata, verum donis eximiis et possessionibus ampliata. Transtulerunt ad eam ampla sua patrimonia reges, transtulerunt electi principes, ut jam sit etiam corporaliter impletum, quod de filiis ecclesie dudum est prophetâ vaticinante predictum; "Fortitudinem gentium comedetis, et in gloriâ eorum superbietis." Et illud; "Ut det illis hereditatem gentium. Item Ysaïas, "Dilata tentorium tuum; longos fac funiculos tuos; ad dextram et ad levam dilataberis". Vetus quidem habet historia, in opus illud tabernaculi antiquum illum populum eâ devotione contulisse donaria, ut compulsi artifices dicerent Moyfi, Plus offert populus quam necesse est. Quorum quantacunque devotio, filiis tamen gratie non equatur, quibus sepe numero satis non est donare singula, nisi supererogent universa. Est vero cuique liberum, cum transfert donando quod suum est, donationi conditionem quam velit annectere, quantum nec legibus nec bonis constat moribus obviare. Hanc itaque donationi regum conditionem annexam estimant, hoc consuetudine tot temporum obtinente curriculum affirmant, ut regibus ecclesie militaria, et annexa prediis alia quedam persolvant obsequia, et possessiones ipsas a regibus, persone sue principaliter hominio, et fidelitate, presente evangelio, promissâ, recognoscant. Sic igitur ecclesie geminata potestas est, ut hinc regi celesti serviat, hinc terreno principi, quod ad eos spectat exhibeat. Ejusque ministros efficit potestas, hinc a Deo collata, pontifices, hinc a rege suscepta, comites aut barones. Potestas hec est quâ magnum in palatio obtinet ecclesia principatum, cum in omnibus regni judiciis, preterquam si de vite periculo tractetur aut sanguine, locum habeat ipsa precipuum. Hec regi nos obligant, (ut affirmant) ut ab ipso citati debeamus assistere, et singulorum causas universi discutere et judicare. Nam qui in his que ad Deum sunt gradu quodam distinguimur, ut superiores quidam, inferiores alii, reputemur et simus, nos in hoc pares estimant, ut si de fundis ad ecclesiam liberalitate regiâ devolutis, inter nos, aut in nos, fuerit oborta contentio, apud regem que spectant ad singulos universorum definiat pronuntiatio. Nec mirum si patrem teneat à filio lata sententia, et cum hominio fidelitas reverenter exhibita. Cum sit igitur à Deo gemina potestas, hinc sacerdotalis, hinc regia; utramque secundum quid preesse alteri, et ab alterâ secundum quid posse judicari, patrum auctoritate confirmant, ut sit regum et presulum vicissitudo hec, quâ se vicissim judicant et judicantur a se, forte quoddam caritatis vinculum, reverentie debitum, et utrique necessitudo quedam conservande pacis ad alterum. Hec et his altiora considerans, regem, quasi precellentem, prout monet

VOL. IV. C c apostolus,

apostolus, honorastis, et ejus parendo sententie rectè judicem agnovistis, sibi que servando quod suum est, ipsum, in his que ad Deum sunt, vestre parere sublimitati prudenter et providè monuistis. Omni humane creature propter Deum sancta se submittat humilitas, et quo se dejicit inferius, eo, juxta verbum Domini, meretur altius et gloriosius exaltari. Atque in his utinam humilitatis finibus res ipsa tota resedisset, et, cum à vobis quedam debita reposceret Dominus noster rex, cum de summâ pecunie, quam in manu vestra ex caducis quibusdam excrevisse memorabat, quod jus dictaret id sibi solum peteret exhiberi, ad declinandum regalis curie judicium tunc se vester minimè zelus erexisset. Nam quid poterat inferre periculi danda super hac petitione sententia? Ad regimen ecclesie vos a curiâ transferri voluit, et ab ipsius nexibus hoc ipso vos, ut plures opinantur, absolvit. Quod si ad debita minimè referendum est, ut evectus loco sic absolvatur a debito, poterat negotium per exceptionem in rem versum plurimum expediri; et, si quid compoto nequivisset includi, iratè magis repetenti sua quam avidè, de reliquo poterat satisfdari; et civilis hec causa, absque hoc rerum turbine, pace poterat honestissimâ terminari. Sed inauditum dicitis, ut in regis curiâ Cantuariensis unquam compelleretur ad talia. Et id dixeritis inauditum, officialem curie repentino transitu ad illam ecclesiam unquam hætenus sic ascendisse, ut hodie quis curiam, cras dispensaret ecclesiam, ab avibus et canibus ceterisque curie jocundis usibus cito quis astaret altaribus, et episcopis totius regni spiritualia ministraret et sacerdotibus. Usus igitur in diversa tendente consilio, domum regiam, crucem gestans in manibus, introistis, et execrande cujusdam malitie suspectum regem omnibus ilico reddidistis. At ejus innocentiam summis efferenda preconiiis patientia declaravit. Illationem crucis adversum se etsi moleste tulerit, fines tamen regie modestie non excessit. Non irâ motus efferbuit, non verbo malignatus aut opere, causam, quam sua repetens intenderat, fine studuit justicie debito terminare. At, declinando judicium, ad dominum papam appellastis, et, sicut in ingressu, sic in egressu vestro, summam regis mansuetudinem et tolerantiam vobis observate pacis indiciiis agnovistis. Nam ut, in Absalonem prodeunte exercitu, paterna pietas exclamavit: "Servate mihi puerum Absalon", sic, ejus mandato, voce statim preconariâ cunctis innotuit, ut si quis vobis aut vestris cuiquam molestus existeret ultore gladio deperiret. Addidistis ad hæc, ut, tanquam vitæ vestræ vel sanguini machinarentur insidias, fugâ nocte initâ, mutato habitu, post latitationem aliquantulam, a regno clam transmeastis, et nemine prosequente, nullo vos expellente, extra dominationis sue loca, in regno vobis altero ad tempus sedem elegistis. Inde navem disponitis gubernare, quam

quam in fluctibus et tempestate, subducto remige, reliquistis. Hinc nos vestra jubet autoritas, et hortatur, ut convertamur ad vos et salvi simus, ut vestris inherendo vestigiis pro Christo mortem subeamus, et pro liberandâ ipsius ecclesiâ animas ponere non metuamus. Et utique si attendamus quanta nobis promittantur in celis, debeant animo vilescere quæcunque possidentur in terris. Nam nec lingua dicere nec intellectus capere valet illa superne civitatis quanta sint gaudia; angelorum choris interesse, cum beatissimis spiritibus glorie conditoris assistere, presentem Dei vultum cernere, nullo metu mortis affici, incorruptionis sue munere perpetuo gloriari! Passiones hujus temporis minime condigne sunt ad futuram gloriam que revelabitur in sanctis; et quod modo leve est et momentaneum tribulationis supra omnem modum eterne glorie pondus operabitur in electis. Hec nostris jamdiu sensibus insederunt, nostra jamdiu studia hec post se promissa traxerunt. Caput utinam, quod mihi scapulis infidet, lictoris gladius projecisset in medium, dum tamen legitimo Deoque placito certamine decertassem. *At martyrem non pena facit, sed causa.* Dura sanctè perpeti, gloria est: improbè pertinaciter, ignominia. Pro Christo subire gladium, consummata laus est et victoria; hunc in se temerè provocare, latè patens insania. Et si vestra, pater, non solum dicta, verum facta pensamus, in mortem nec temerè nec leviter impingemus. Nam genu Clarendone curvando, fugam Northamtone ineundo, mutato ad tempus habitu delitescendo, a regni finibus clam emigrando, quid actum est? quid hæc agendo procurastis, nisi quod mortem, quam nemo dignabatur inferre, tam sollicitè declinastis. Nos igitur ad mortem quâ fronte pater invitastis, quam vos et formidastis et fugistis indiciis tam manifestis toti mundo luce clarius ostendistis? Que vos suadet caritas nobis onus imponere quod abjecistis? Gladius nobis imminet quem fugistis, in quem fundum jacere, non dimicare cominus, elegistis. Ad similem forte fugam nos invitastis. At nobis mare clausum est, et post discessum vestrum naves nobis sunt omnes et portus inhibiti. Insule terrarum claustra regum fortissima sunt, unde vix evadere vel se quis valet expedire. Si nobis pugnandum est, de proximo contendemus: si cum rege pugna conferitur, unde percutiemus gladio nos ibi gladius reperiens inveniet. Unde vulnus infligemus vulnera declinare nequibimus. Et annui vestri redditus nunquid vobis tanti sunt, ut fratrum vestrorum sanguine vobis hos velitis adquiri? At Judâ reportante pecuniam, hanc Judei respuerunt, quam sanguinis esse pretium agnoverunt. Sed aliam nobis causam fortasse proponitis. —Paululum itaque divertamus, ut mortis nobis suadende causam plenius

attendamus. Gratias Domino, Nulla penes nos est de fide contentio, de sacramentis nulla, nulla de moribus. Viget recta fides in principe, viget in prelatiis, viget in subditis. Omnes fidei articulos regni hujus ecclesia sanè complectitur. A summi pontificis obedientiam presentis schismatis insaniam nemo dividitur. Ecclesie sacramenta venerantur omnes et excolunt. Suscipiunt in se, et aliis pie sancteque communicant. Quod ad mores, in multis quidem offendimus omnes: Errorem tamen suum nullus prædicat aut defendit; verum penitentiae remedio sperat posse dilui quod admittit. *Tota igitur in regem est et de rege contentio, ob quasdam consuetudines, suis predecessoris observatas, (ut asserit) et exhibitas, quas sibi vult et expetit observari.* Super hoc a vestra sublimitate commonitus non desistit à proposito, non renunciat iis que formavit antiquitas et longa regni consuetudo. Hec est causa cur ad arma decurritis, et in sanctum caput et nobile gladium librare contenditis. In quo refert plurimum quod has ipse non statuit, sed, ut tota regni testatur antiquitas, sic eas repperit institutas. Nam difficilius evellitur quod altius radicatur. Heret planta tenacius que suas in altum jam diu radices immiserat; quam si quis transferre desiderat, non viribus evellenda est, ne protinus exarescat. Circumfodienda est prius, et humus est ejicienda; denudanda radix undique, ut sic prudens expleat diligentia quod vis commodè non expleret, incompetenter adhibita. A bonis exempla sumenda sunt, et, cum tractantur hujusmodi, ipsorum sunt opera diligentius attendenda. Predecessor vester ille pater Augustinus multa a regno hoc extirpavit enormia, et ipsum regem fide illuminans pravas ab eo consuetudines, non quidem paucas, eliminavit, non maledictis equidem, sed benedicendo potius et predicando, exhortando salubriter, et potentum animos ad bonum fortiter inclinando. Cremensis ille Johannes, diebus nostris, in partes has a sancta Romanâ ecclesiâ directus, regni consuetudines, in quibus jam senuerat, immutavit: quod non maledictis aut minis, sed doctrinâ sanâ et exhortationibus sanctis optinuit; benedicendo seminavit, de benedictionibus et messiem fecit. Hi, si ad arma decurrissent, nihil aut parum profecissent. A pio Francorum rege, optatâ diu prole sibi jam concessâ divinitus, nuper illi regno multa sunt remissa gravamina, que firmaverat antiquitas hæcenus inconvulsa. Hec, suggerente, ut audivimus, ecclesiâ, et monente, non electum principem minis impetente, sublata sunt. Que denique, quanteve dignitates, libertates, immunitates, possessiones, ecclesie Dei, a piis regibus, orbe toto, pietate solâ, non maledicti necessitate, collata sint, quis valeat explicare! Utique tempus id volentem explicare deficiet. Hec namque regum est laude digna nobilitas: Ab ipsis supplex optinet, quod erectus in minas nullis unquam

quam conatibus optineret. Ipsius nummi pretium tam reputatur vile quam exiguum. Quod si vi quisque violenter intenderet, magnos in re modicâ rei sue defensores spe cito frustratus agnosceret. Hec itaque, non fervore novitio, sed maturo fuerant attendenda consilio. Erant fratrum vestrorum et aliorum plurimum in his exquirenda consilia, attendenda patrum prudentum opera, cum incommotis ecclesie pensanda commoda, et hec tum demum danda forte sententia, cum jam foret spes nulla superesse remedia. Que, profecto, cum datur juxta sacrorum formam canonum, attendendum est in quem detur, cur detur, quomodo detur, an expediat ecclesie quod detur, et obfuturum sibi si non detur. Is vero quem impetitis, (ut nota vobis referamus) nunquid non ipse est quem dulcissima pignora, nobilissima conjux et honesta, subjecta sibi regna quam plurima, amicorum cetus et suis obsequentium nutibus tot populorum agmina, mundi queque pretiosa, vix detinent, vix blandiendo persuadent, quin, spretis omnibus, post crucem suam portantem Dominum Jesum nudus exeat, et paupertatem contemplando quam subiit, id facto studeat implere quod docuit ipse dicens, "Qui non bajulat crucem suam et venit post me, non est me dignus". Hec mentis ejus obstinatio est, hec maledictis opprimenda crudelitas, hec in ecclesiâ Dei toto orbe declamata malignitas? In hunc si maledicta congefseritis, partem sui nobilissimam suis ledi jaculis ecclesia recte condolebit. Ipso namque vulnerato, lesam se, non filiorum paucitas, sed populorum ampla numerositas, ingemiscet. In hoc vero sacra sic docet auctoritas. "In ejusmodi causis, ubi per graves dissensionum scissuras non hujus aut illius est hominis periculum, sed populorum strages jacent, detrahendum est aliquid severitati, ut majoribus malis sanandis caritas sincera subveniat": Et iterum, "Non potest esse salubris a multis correctio, nisi cum ille corripitur qui non habet sociam multitudinem." Medico namque quis ascribit industrie, ut vulnus unum sanet, aliud longe majus, longe periculosius, infligat. Discretionem quis attribuat, ob quedam, que poterunt et levius et expeditius optineri, ecclesiam sic deferere, in principem exurgere, et ecclesie totius regni concussâ pace, animarum in subditis corporumque pericula non curare? Augustinus cessit: Ambrosius ecclesiam deferere non approbavit. Nam quid a bono principe vestra pater prudentia poterat non sperare, quem divino compunctum spiritu in Christum adeo noverat anhelare? Ille consuetudines, temporales commodi nil prorsus sibi conferentes quanti sibi sunt, cui ipsa mundi gloria, quantamcunque se offerat, jam tota fere viluit, et a cordis sui desiderio tam procul est, ut Domino loquens sepius dicat quod scriptum est, *Insigne mei capitis odi, Domine, tu scis* *. Nunquid non hic fovendus

* This alludes to the Vow the King had made never again to wear his Crown.

erat,

erat, et in ipso nidificanti columbe sancte dimittendus, donec plenè formatus in ipso Christus occulta ejus in lucem traheret, produceret, et libertates ecclesie, non tantum has de quibus agitur, sed et longe propensiores, ipse, quasi manu propriâ, distribuerit? In his quidem quod scimus loquimur, quod novimus id confidenter asserimus. Consuetudines, in quas plus candescitis, dominus noster rex jam pridem penitus exprevisset, si non hoc propositum duo graviter impedissent: Unum, quod sibi timet dedecori, à patribus ad se devoluto regno, diebus suis, subtrahi quicquam vel diminui: Alterum, si quid remittat ob Dominum, erubescit, ut hoc sibi vi reputetur extortum. Primum tamen illud jam sanctitatis pede calcaverat, et ipsum in hoc Dei timor, innata bonitas, domini pape sancta monitio, multorumque in hoc supplicatio continuata produxerant, ut, ob ejus reverentiam, per quem ultrà omnes suos patres longe magnificatus est, ecclesiam Dei convocare et regni consuetudines, que gravamen sibi noscerentur inferre, multâ devotione spiritûs, immutare vellet ultroneus et corrigere. Et, si penes vos cepta perseverasset humilitas, ecclesiam Dei in regno exhilarasset jam diffusa latè jocunditas. Nam finem, in quem tenditis, vicerat jam supplicatio, cum male totum impedivit a vobis orta recens turbatio. Nam, cum suis nondum Britannia titulis accessisset, et levaret in eum usque tunc indomita gens illa calcaneum, cum produceret in turbatores pacis exercitum, terribiles in illum literas, devotionem patris, modestiam pontificis, minimè redolentes, emisistis; et quod summi pontificis admonitio, multorumque elaboraverat supplex et intenta devotio, suspirando minas ilico sustulistis, et tam regem, quam regnum, in scandalum cunctis retro actis ferè gravius impulistis.

Avertat Deus finem, quem, negotio sic procedente, metuimus; qui ne nostris erumpat temporibus, ob honorem Dei et sancte ecclesie reverentiam, ob vestrum (si placet) commodum, ob pacis commune bonum, ob minuenda scandala, et que turbata sunt ad pacem, juvante Domino, revocanda, ad dominum papam appellavimus, ut vestri cursûs impetum vos in regem pronè rapientis et regnum, ad tempus saltem cohibeamus. Quâ in re bonum est, ut intra fines modestie vester se velit zelus cohibere, ne, ut regum jura subvertere, debitam quoque sic domino pape reverentiam, appellationes ad ipsum interpositas non admittendo, nimis e sublimi studeat exinanire. Quod si placet advertere, ad Zacheum non divertisse Dominum, nisi cum de sicomoro jam descendisset, descenderis forsitan, et quem minis exasperastis verbis aliquando pacificis mitigare studeretis, non solum exigendo, sed et satisfactionem humilem, etsi forte injuriam passus, offerendo. Puerum apostolis proposuit exemplo

Dominus,

Dominus, qui lesus non irascitur, injurie cito non meminit, nec quicquam malicioſe molitur, dum magna non affectat, ſibi totum hoc innocentis vite remedio viteque jocunditate pleniffimâ recompensat. Singulare itaque virtutis exemplar ipſe eſt, qui ſe crucifigentes abſolvit, qui latâ caritate perſequentes et odientes amari precipit, et, ſi peccet frater in nos, veniam non ſolum ſepties, ſed et ſeptuagies ſepties, imperat impertiri. Iſta quid non poſſet humilitas? apud dominum noſtrum regem quid non optineret viarum iſta perfectio? Callis iſte rectus eſt, ad pacem recte perducens, quem pater cum intraveritis, pacem ilico apprehendetis, et diſperſis triſtitie nebulis, cuncta pace, gaudio cuncta replebitis, et a rege piiffimo dominoque noſtro kariffimo, non ſolum que ad preſens petitis, ſed et longe majora his, Domini ſpiritu cor ejus accendente, et in amorem ſuum ſemper dilatante, feliciter optinere poteritis. *

N° IV.

Epist. cxxvi. Lib. i. Thomæ Cantuarienſi Archi-epiſcopo Clerus Angliæ.

This refers to
p.426, vol.II.

Venerabili Patri et Domino Thomæ, Dei gratia, Cantuarienſi Archi-epiſcopo, ſuffraganei ejusdem eccleſiæ Epifcopi, et Perſonæ per eorundem Diœceſes locis variis conſtitutæ, debitam ſubjectionem et obedientiam.

QUÆ veſtro, Pater, in longinqua diſceſſu, inopinatâ rei ipſius novitate turbata ſunt, veſtrâ ſperabamus humilitate et prudentiâ in pacis priſtinæ ſerenitatem, cooperante Dei gratiâ, revocari. Erat quidem nobis ſolatio, quod poſt diſceſſum veſtrum, ad omnes ilico famâ divulgante pervenit, vos tranſmarinis agentem nil altum ſapere, vos in Dominum noſtrum Regem aut Regnum ejus nullâ machinatione inſurgere, ſed ſponte ſuſceptum paupertatis onus cum modestia ſuſtinere; lectioni et orationi inſiſtere, præteritorumque jacturam temporum jejuniiſ, vigiliis, lacrymiſque redimere, et ſpiritualibus occupatum ſtudiis ad perfectionis apicem beatis virtutum incrementis adſcendere. Ad pacis bona reformanda vos ſtudiis hujusmodi gaudebamus inſiſtere, ex quibus ſpes erat vos in cor Domini noſtri Regis hanc poſſe gratiam deſuper

* The foregoing Letter is here miſplaced, it's proper place being after Epist. cviii. l. 1. E. Codice Vaticano, to which it is an answer. The accents denoting the Ablative Caſe are not in the Manuſcript, but are added here to help the Reader, as there is ſome obſcurity in the ſtyle of the letter, and from the old ſpelling of the Manuſcript. The following letters are taken from the printed Bruffels Edition of Becket's Letters after the Vatican Manuſcript.

evocare, ut vobis iram Regiâ pietate remitteret, et illatas in discessu et ex discessu vestro injurias ad cor de cætero non revocaret. Erat Amicis vestris et Benevolis ad ipsum aliquis, dum hæc de vobis audirentur, accessus, et ob conciliandam vobis gratiam supplicantes benignè quandoque sustinuit. Jam verò quorundam relatione didicimus, quod ad memoriam anxie revocamus, vos scilicet in eum comminatorium emisisse, quo salutationem omittitis, quo non ad obtentum gratiæ consilium precesse porrigitis, quo non amicum quid sentitis aut scribitis, sed intentatis minis interdictum aut præcisionis elogium in eum jam dicendum fore multâ severitate proponitis. Quod si quàm durè dictum est, tam fuerit severe completum, quæ turbata sunt non jam speramus ad pacem redigi, sed in perenne quoddam odium et inexorabile pertimescimus inflammari. Rerum verò finem prudentia sancta considerat, dans operam sollicitè, ut quod prudenter inchoat, bono quoque fine concludat. Advertat itaque, si placet, discretio vestra, quò tendat, an conatibus hujusmodi queat finem obtinere, quem optat. Nos quidem his ausis à spe magna cecidimus, et qui pacis obtinendæ spem quandoque concepimus, ab ipsis jam spei liminibus gravi quâdam desperatione repellimur. Et dum velut extracto gladio pugna conferitur, pro vobis supplicandi locus utique non invenitur. Unde Patri scribimus ex charitate consilium, ne labores laboribus, injurias superaddat injuriis, sed, omiſſis minis, patientiæ et humilitati inserviat, causam suam divinæ Clementiæ, Dominique sui gratiæ misericordi committat; et sic agendo carbones ignis in multorum capita coacervet et congerat. Accenderetur hoc modo charitas, et quod minæ non poterant, inspirante Domino, bonorumque suadente consilio, sola fortasse pietas obtineret. Bonum erat de paupertate voluntariâ glorioſè laudari, quam de beneficii ingratitudine ab omnibus in commune notari. Insedit altè cunctorum mentibus, quam benignus vobis Dominus noster Rex exstiterit, in quam vos gloriam ab exili provexerit, et in familiarem gratiam tam latâ vos mente suscepit, ut Dominationis sua loca, quæ a Boreali oceano ad Pyrenæum usque porrecta sunt, Potestati vestræ cuncta subjecerit, ut in his solùm hos beatos reputaret opinio, qui in vestris poterant oculis complacere. Et, ne vestram gloriam mobilitas posset mundana concutere, in his quæ Dei sunt voluit immobiliter radicare. Et dissuadente matre suâ, Regno reclamante, Ecclesiâ Dei, quoad licuit, suspirante et ingemisciente, vos in eam, quâ præestis, Dignitatem, modis omnibus studuit sublimare, sperans se de cætero regnare feliciter, et ope vestrâ et consilio, summâ securitate gaudere. Si ergo securim accipit, unde securitatem sperabat, quæ de vobis erit in cunctorum ore narratio? Quæ retributionis hæctenus inauditæ rememoratio? Parcatis ergo, si placet,

cet, famæ vestræ, parcatis et gloriæ: Et humilitate dominum, filiumque vestrum charitate vincere studeatis. Ad quod si nostra vos monita movere nequeunt, debet saltem summi pontificis, sanctæque ecclesiæ Romana dilectio et fidelitas inclinare. Vobis enim suaderi debet è facili, ne quid attentare velitis, quod laboranti jamdiu matri vestræ labores augeat, quovè multorum inobedientiam deploranti in eorum qui obediunt amissione dolor accrescat. Quid enim si vestrâ, quòd absit, exacerbatione et operâ Dominus noster, quem, largiente Domino, populi sequuntur et regna, à Domino Papa recesserit, ipsumque sibi fortassis adversum vos solatia denegantem sequi de cætero declinaverit? Ipsum namque, in hoc, quæ supplicationes, quæ dona, quot, quantave promissa sollicitant? In petrâ tamen firmus huc usque perstitit, et totum quod mundus offerre potest victor altâ mente calcavit. Unum nobis timori est, ut quem oblatae divitiæ, et totum quod in hominum gloriâ pretiosum est, flectere nequiverunt, animi sui valeat indignatio sola subvertere. Quod si per vos acciderit, in threnos totus ire poteritis, et lacrymarum fontem oculis vestris de cætero negare nullâ quidem ratione poteritis. Revocetis itaque, si placet Sublimitati vestræ, consilium, Domino quidem Papæ, sanctæque Romanæ ecclesiæ, vobisque, si placet advertere, modis omnibus, si processerit, obfuturum. Sed qui penes vos alta sapiunt vos hâc fortè viâ progredi non permittunt. Hortantur experiri quis sitis, in Dominum Regem, et omnia quæ sua sunt, potestatem exercere quâ præestis. Quæ nimirum potestas peccanti timenda est, satisfacere nolenti formidanda. Dominum verò Regem non quidem non peccasse dicimus, sed semper Domino paratum satisfacere confidenter dicimus et prædicamus. Rex à Domino constitutus paci providet per omnia subditorum; et, ut hanc conservet ecclesiis et commissis sibi populis, dignitates Regibus ante se debitas et exhibitas sibi vult ac exigit exhiberi. In quo si inter ipsum et vos aliqua est oborta contentio, à summo super hoc pontifice, paternâ gratiâ, per venerabiles fratres nostros Londoniensem et Herefordensem episcopos conventus et commonitus, non in cælum os suum posuit, sed de omnibus, in quibus vel ecclesia, vel ecclesiastica quæcumque persona, se gravatam ostenderet, se non alienum quærere, sed ecclesiæ regni sui parituum judicio, humiliter et mansuetè respondit. Quod quidem et factis implere paratus est, et dulce reputat obsequium, ut corrigat, si quid offendat in Deum. Nec solùm satisfacere, sed etiam, si jus exigit, in hoc satisfacere paratus est. Igitur et satisfacere volentem, ecclesiæque se judicio, in his quæ sunt ecclesiæ, nec in modico subtrahentem, colla Christi jugo subdentem, quo jure, quâ lege, quovè canone aut interdicto gravabit, aut securi, quod absit, Evangelicâ præcidetis?

Non impetu quidem ferri, sed judicio prudenter regi, laudabile est. Unde nostrum omnium una est in commune petitio, ne consilio præcipiti maculare pergatis et perdere, sed commissis ovibus, ut vitam, ut pacem, ut securitatem habeant, paternâ studeatis gratiâ providere.

Movet quidem omnes nos, quod in patrem nostrum, Dominum Saresberiensem episcopum, et decanum ejusdem, præposterè, ut quidam existimant, nuper actum audivimus: in quos suspensionis aut damnationis pœnam, ante motam de culpâ controversiam, calorem, ut videtur, iracundiæ, plusquàm justitiæ secutus tramitem, intorsistis. Ordo judiciorum novus hic est, huc-usque legibus et canonibus, ut sperabamus, incognitus, damnare primum, et de culpâ postremò cognoscere. Quem ne in Dominum nostrum Regem et regnum ejus, ne in nos et commissas nobis ecclesias et parochias, in Domini Papæ damnum, sanctæque Romanæ Ecclesiæ dedecus et detrimentum, nostræque confusionis augmentum non modicum, exercere tentetis et extendere, remedium vobis appellationis opponimus. Et qui contra metum gravaminum in facie ecclesiæ vivâ jamdudum voce ad Dominum Papam appellavimus, iterato jam nunc ad ipsum scripto etiam appellamus, et appellationi terminum diem adscensionis Dominicæ designamus, quantâ quidem possumus devotione supplicantes, ut, inito salubriori consilio, vestris ac nostris laboribus expensisque parcatis, causamque vestram in hoc, ut remedium habere queat, ponere studeatis. Valere vos optamus in Domino, Pater.

N° V.

*Epist. cxxvii. Lib. i. Thomas Cantuariens. Archi-episcop. Universo Clero Angliæ. **

Thomas Dei gratiâ Cantuariensis ecclesiæ minister humilis venerabilibus Fratribus suis, universis Canticiæ Provinciæ Dei gratiâ Episcopis, si tamen universi scribunt, salutem, et id agere quod nondum agunt.

This Letter refers to p. 426, 427, of the History.

FRATERNITATIS vestræ scriptum, quod tamen de prudentiæ vestræ communi consilio non facilè credimus emanasse, nuper ex-insperato suscepimus. Cujus continentia plus videtur habere mordacitatis quàm solatii: Et utinam magis esset emissum de pietatis studio, de charitatis affectu, quàm de obedientiâ voluntatis. Charitas enim non quærit quæ sua sunt, sed quæ Jesu-Christi. Erat quippe de jure officii, si veritatem habet Evangelium, quod quidem habet, si rectè agitis ejus

* This Title is wrong, not being agreeable to the superscription which follows: but it stands so in the printed Edition of Becket's Letters, and likewise in the Cottonian Manuscript in the British Museum.
officium,

officium, si fideliter ejus negotium geritis cujus representatis figuram, magis eum timere qui potest animam et corpus mittere in gehennam, quàm qui potest corpus occidere; magis Deo obedire quàm hominibus, Patri quàm Domino; ejus exemplo, qui factus est Patri obediens usque ad mortem. Mortuus itaque est ipse pro nobis, nobis relinquens exemplum, ut sequamur ejus vestigia. Commoriamur ergo et nos ei, ponamus animas nostras pro liberandâ ecclesiâ à jugo servitutis, et oppressione tribulantis, quam ipse fundavit, cujus comparavit libertatem sanguine proprio; ne, si secus egerimus, merito comprehendat nos illud Evangelicum, "Qui amat animam suam plus quàm me, non est me dignus." Optimè nosse debueratis, quoniam, si justum est quod præcipit imperator, ejus debetis exequi voluntatem; si verò contrarium, respondere, "Quoniam oportet nos magis obedire Deo, quam hominibus." Unum vobis dico, ut salvâ pace vestrâ loquar, multo tempore filii, expectans si fortè inspiraret Dominus vobis, ut resumeretis vires, qui conversi estis retrorsum in die belli: Si fortè saltem aliquis ex omnibus vobis adscenderet ex adverso, opponeret se murum pro domo Israhël, simularet saltem inire certamen contra eos, qui non cessant quotidie exprobrare agmini Domini. Expectavi: non est qui adscendat: Sustinui: non est qui se opponat: Silui: non est qui loquatur: Dissimulavi ego, non est qui vel simulatione certet. Reposita est mihi de reliquo querelæ actio, ut meritò clamare habeam; "Exurge, Deus, judica causam meam." Vindica sanguinem ecclesiæ, quæ eviscerata est, quæ facta est oppressione exanimis. Superbia enim eorum qui oderunt ejus libertatem adscendit semper, nec est de cætero qui faciat bonum.

Utinam, Fratres dilectissimi, is esset vobis affectus in defensionem libertatis ecclesiæ, qui paret et propinatur nobis in ejus confusionem, literis vestris, ut credimus, minùs legitimè appellatoriis. Verùm fundata est ipsa supra firmam petram, nec est qui eam possit evellere, etsi concutere. Ut quid ergo quæritis me confundere? Immò vos ipsos in me; immo et me vobiscum; Hominem qui suscepi in me periculum, sustinui tot opprobria, toleravi tot injurias, expertus sum etiam proscriptionem pro omnibus vobis. Expediebat quidem unum affligi pro ecclesiâ istâ; ut vel sic excutiat à servitute. Discutite mente simplici causam istam, examine negotium, diligenter attendite quis ejus debeat esse finis; ut, deductâ majestate imperii, postpositâ penitus personarum acceptione, quarum Deus acceptor non est, faciat ipse vobis intelligere, quid est quod egeritis, quidque quod intenditis agere. Auferat ipse Deus velamen de cordibus vestris, ut cognoscatis quid agere debeatis. Dicat

ex omnibus vobis qui noverit, si unquam post meam promotionem alicujus vestrum tuli bovem aut asinum, si alicujus pecuniam, si alicujus causam iniquè judicavi, si alicujus vestrum dispendio comparavi mihi compendium : Reddo quadruplum. Si verò non est quod offenderim, ut quid me solum derelinquitis in causâ Dei? Quare vos ipsos vobis ipsis opponere curatis in causâ istâ, quâ nulla specialior est ecclesiæ? Nolite, patres, nolite vos ipsos et ecclesiam Dei, quantum in vobis est, confundere, sed convertimini ad me et salvi eritis. Dominus enim dicit, “Nolo mortem peccatoris, quantum ut convertatur et vivat.” State mecum viriliter in prælio, apprehendite arma et scutum, et exurgite mihi in adjutorium. Accingimini gladio verbi Dei potentissimi, ut simul omnes fortius et validè valeamus unâ resistere, pro officii nostri debito, adversum malignantes, adversum operantes iniquitatem, adversum eos qui quærunt tollere animam ecclesiæ, quæ est libertas, sine quâ nec viget ecclesia, nec valet; adversum eos qui quærunt hæreditate sanctuarium Dei possidere.

Festinemus ergo simul omnes id agere, ne ira Dei descendat super nos, tamquam super negligentes pastores et desides; ne reputemur canes muti, non valentes latrare; ne exprobetur nobis a transeuntibus, “A senioribus Babylonis egressa est iniquitas.” Reverà si me audieritis, scitote quoniam Dominus erit vobiscum, et cum omnibus vobis in cunctis viis vestris ad faciendam pacem et defendendam ecclesiæ libertatem. Alioquin judicet Deus inter me et vos, et ecclesiæ confusionem requirat de manibus vestris. Quoniam, velit, nolit mundus, necesse est ipsam stare firmiter in verbo Domini, in quo fundata est, donec veniat hora ejus, ut transeat de hoc mundo ad Patrem. Judicabit Deus de eo, quod reliquistis me solum in certamine, nec est qui velit mecum ascendere ad pugnam ex omnibus charis meis : Solum adeò, ut cogitet quilibet vestrum vel dicat, “Væ soli; quia, si ceciderit, non habet sublevantem se.” Sed repocita est mihi hæc spes mea in sinu meo, quoniam solus non est cum quo Dominus est, qui, cum ceciderit, non collidetur : supponit enim ipse Dominus manum suam.

Ut itaque veniamus ad rem, dicite, patres mei, exciditne à vestra memoriâ, quid ageretur mecum, et cum ecclesiâ Dei, dum adhuc essem in Anglia; quid in exitu meo, quid post exitum, quid etiam agatur diebus istis; quid maximè apud Northamptonam, cum iterum judicaretur Christus in personâ meâ ante tribunal Præsidis; cum arctaretur Cantuariensis, ob injurias sibi et ecclesiæ Dei passim illatas, et sine delectu, Romanam audientiam appellare; bona sua, quæ malè dicimus sua, cum sint bona pauperum, patrimonium crucifixi, quæ potius ei sunt commendata quam donata, sub Dei ponere protectione et ecclesiæ Romanæ?

Romanæ? Quis unquam, etsi aliquando injustè proscriptum divina declaravit clementia, vidit, audivit, Cantuariensem judicari, condemnari, cogi ad fidejussionem in curiâ regis, à suis præcipuè suffraganeis? Ubi est inventa ista juris vel canonum authoritas adversa, immò perversa perversitas? Ut quid enormitas ista non parit vobis erubescuntiam, erubescuntia non immittit confusionem, confusio non elicit pœnitentiam, pœnitentia non excutit satisfactionem coram Deo et hominibus? Ob tot quidem et tantas Deo et ecclesiæ ejus illatas injurias, immo mihi propter Deum, quas sustinere non debui salvâ conscientiam meâ, nec sine discrimine vitæ meæ potui emendare, nec dissimulare sine animæ periculo, elegi potius declinare ad tempus, ut habitarem salubrius in domo Domini quàm in tabernaculis peccatorum, donec completa esset iniquitas, revelarentur corda iniquorum, manifestarentur cogitationes cordium. Ita tot injuriarum illatio fuit causa apellationis meæ. Hæc fuit occasio recessûs mei, quem dicitis inopinatum, qui magis, secundum ea quæ proponebantur adversum me, quæ agebantur mecum, si veritatem loquimini qui novistis, debuisset fuisse inopinatus, nè impediretur præscitus. Sed, Domino vertente casus adversos in melius, prospectum est Domini nostri Regis honori et suorum, ne quid fieret in me, in ipsius ignominiam et generationis suæ. Melius etiam consultum est iis qui suspirabant in necem meam, qui sitiebant sanguinem meum, qui adspirabant ad fastigium ecclesiæ Cantuariensis, ut vulgò dicitur et creditur, in nostram perniciem, utinam minus ambitiosè quàm avidè. Appellavimus et appellati sumus; rebus ecclesiæ Cantuariensis, nostrisque et nostrorum, sicut juris exigit ratio, in tuto manentibus, nostram prosecuti sumus apellationem. Si, nobis recedentibus, et in discessu nostro, omnia turbata sunt, prout dicitis, sibi imputet qui causam dedit, qui hoc procuravit. Facientis proculdubio culpa hæc est, non recedentis; persequentis, non declinantis injurias. Damnum enim dedisse videtur qui causam damni dedit. Quid plura? Præsentavimus nos curiæ, nostras et ecclesiæ exposuimus injurias, adventûs nostri causam et apellationis exposuimus: non adfuit qui nobis responderet vel in aliquo. Expectavimus, nec venit qui nobis aliquid objiceret. Nulla adversum nos reportata sententia, antequam veniretur ad Regem, nobis adhuc de more expectantibus in curiâ, si fortè nobis aliquid exponeretur: ad nostros accessum est officiales; interdictum est eis, ne in aliquo super temporalibus nobis obedirent, ne nobis vel nostris quidquam ministraretur ab ipsis citra mandatum regis et conscientiam; te, frater Londoniensis, cum Richardo de Welcester et Eboracensi, sicut dicitur, dictante sententiam.

Festinaturn

Festinaturn est inde ad Dominum Regem. Viderit ipse, in caput ejus convertatur, qui hoc dedit consilium. Sine judicio, sine ratione, post appellationem, nobis etiam adhuc in curia morantibus, spoliata est ecclesia, spoliati sumus et nos cum nostris, proscripti et ipsi clerici cum laicis, viri cum mulieribus, mulieres cum infantibus in cunabilis. Ad dicta sunt fisco bona ecclesiae, patrimonium crucifixi: Pars pecuniae conversa in usus regios, pars in tuos, frater Londoniensis, si vera sunt quae audivimus, et tuae ecclesiae. Quam, si ita est, exigimus à te, praecipientes tibi in virtute obedientiae, quatenus, intra quadraginta dies post istarum susceptionem literarum, quidquid inde tulisti, vel in usus ecclesiae tuae conversum est, remotâ omni occasione et dilatione, infra tempus praenominatum nobis integrum restituas. Iniquum enim est, et juri valdè contrarium, ecclesiam ditari de alterius ecclesiae incommodo. Si laudas auctorem, scire debes, super rebus ecclesiae ablatiis, eum legitime non posse praestare auctoritatem qui violentam facit injuriam.

Quo ergo jure perverso, quo canonum ordine transposito, poterunt se tueri raptores sacrilegi, bonorum ecclesiasticorum invasores, non restitutis ablatiis ecclesiae? Opponentne appellationis obstaculum? Absit. Quae nova, immò quae juri contraria introducitis in ecclesias istas? Videte quid agatis. Certè excutitur in vos faba ista, et in ecclesias vestras, si non melius vobis prospexeritis. Periculose enim ageretur cum ecclesiâ Dei, si raptor sacrilegus, alienorum bonorum invasor, maximè ecclesiae, tutus esset adversus eam appellationis auxilio. Frustrâ enim juris implorat auxilium qui juri non obtemperat, immo qui est juri contrarius. Suntne istae injuriae quas addimus injuriis, labores quos laboribus adjicimus, quia ista et alia enormia, quae fiebant et quae fiunt in ecclesiâ istâ, non sustinuimus, quia gravati appellavimus, quia recessimus a curiâ, quia ausi sumus super injuriis ecclesiae et nostris conqueri, et super his omnibus non tacemus, quia ista paramus corrigere? Periculose certè affligitur cui saltem conquerendi solatium negatur. Vos, amici mei, qui altiora sapitis inter alios, qui geritis vos aliis prudentiores, quoniam solent filii hujus saeculi prudentiores esse filiis lucis, ut quid decipitis fratres vestros et subditos? Quare inducitis eos in errorem istum? Quae auctoritas, quae scriptura, contulit hanc principibus praerogativam in ecclesiasticis, quam vos vultis eis conferre? Nolite, fratres, nolite jura regni et ecclesiae confundere. Discretæ quidem sunt potestates istae, quarum una vim et potestatem sortitur ex aliâ. Legite scripturas, et invenietis quot et qui periêre reges, qui nisi sunt sibi sacerdotale officium usurpare. Provideat ergo vestra discretio, ne ob istam pressurâ divina vos atterat injuriam; quam, si venerit, non effugietis de facili.

Consulite

Consulte etiam Domino nostro Regi, qui ejus comparatis gratiam ecclesiæ dispendio, ne, quod absit, pereat ipse, et domus ejus tota, sicut periére qui in consimili deprehensi sunt delicto. Si vero ab hoc incepto non destiterit, quâ animi conscientiam non puniemus ista, quâ puritate conscientiam ista diffimulabimus? Diffimulet quidem qui hanc habet diffimulandi auctoritatem; non ego, ne veniat in animam meam ista diffimulatio. Innuitis literis vestris, immò apertè dicitis, me, regno reclamante, ecclesiâ etiam suspirante et ingemisciente, fuisse promotum. Scitis quid dicit veritas? "Os, quod mendacium scienter loquitur, occidit animam." Verba verò sacerdotis semper comitem debent habere veritatem. Deus bone, nunquid non erubesceret aliquis de plebe ita dicere? Consulte conscientias vestras, advertite formam electionis, consensum omnium ad quos spectabat electio, assensum principis per filium suum, et eos qui ad hoc missi sunt, filii etiam cum omnibus primatibus regni. Si aliquis eorum contradixit, si reclamavit vel in aliquo, loquatur qui noverit, dicat qui est conscius. Si verò inde turbatus fuerit aliquis, non dicat pro suâ molestiâ toti regno et ecclesiæ factam fuisse injuriam. Literas quoque Domini Regis, et omnium vestrum diligentius attendite, postulantes nobis cum multâ instantiâ pallium, et obtinuisse. Sic se habet rei veritas. Verum, si quem torset invidia, si quem afflixit ambitio, si cui tam pacifica, tam legitima, tam sine contradictione facta electio dolorem et amaritudinem impressit animi, eatenus ut ob hoc machinetur et velit turbare omnia, indulgeat ei Dominus et nos, eò quod culpam suam minimè taceat, suamque animi indignationem in conspectu omnium publicè confiteri non erubescat.

Dicitis me de exili sublimatum ab ipso in gloriam. Non sum reverà *atavis editus regibus*. Malo tamen is esse, in quo faciat sibi genus animi nobilitas, quam in quo nobilitas generis degeneret. Fortè natus sum de paupere tugurio! Sed, cooperante Divinâ Clementiâ, quæ novit facere misericordiam cum servis suis, quæ eligit humile ut confundat fortia, in exilitate mea, antequam accederem ad ejus obsequium, satis copiosè, satis abundanter, satis honorificè, sicut ipsi novistis, prout abundantius inter vicinos meos et notos, cujuscumque conditionis fuerint, conversatus sum. Et David, de postcœtante assumptus, constitutus est ut regeret populum Dei; cui aucta est fortitudo et gloria, quoniam ambulavit in viis Domini. Petrus verò, de arte piscariâ electus, factus est ecclesiæ princeps, qui sanguine suo meruit pro nomine Christi in cœlis habere coronam, et in terris nomen et gloriam. Utinam et nos similiter faciamus. Successores enim Petri sumus, non Augusti. Novit Dominus, quo intuitu nos ipse desideraverit sublimari. Respondeat ei sua intentio, et nos respondebimus ei pro officii nostri debito.

debito, fideiùs, per misericordiam Dei, in severitate, quam qui blandiuntur ei in mendaciis. Meliora enim sunt verbera amici, quam fraudulenta oscula inimici.

Impingitis nobis ingratitudinis notam per quandam insinuationem. Credimus quia nullum peccatum criminale est, qui importet infamiam, nisi processerit ex animo. Unde, si quis homicidium invitus commiserit, etsi homicida dicatur et sit, non tamen homicidii reatum incurrit. Sic dicimus: Etsi Domino nostro Regi obsequium debeamus jure Domini, si teneamur ad reverentiam præstandam jure Regio, si Dominum sustinimus, si filium paterno affectu convenimus, si in conventum, non auditi et dolentes, necessitate officii censuram severitatis exercemus, plus credimus nos pro ipso facere, et cum ipso, quàm contrà ipsum; plus ex eo promereri gratiam, quam ingratitudinis notam, vel pœnam. Sæpissimè certè beneficium confertur invito. Unde commodiùs ejus prospicitur indemnitati, qui, etsi non aliàs, urgente necessitate revocatur a perpetrato delicto. Prætereà defendit nos ab ingratitudinis notâ Pater noster et Patronus, qui est ipse Christus. Jure Paterno tenemur ad ejus obedientiam, quâ non observatâ puniemur justâ exhæredationis pœnâ. Potest enim Pater exhæredare filium ex justâ causâ. Ipse enim dicit, "Si non annuntiaveris impio iniquitatem suam, et moriatur in delicto suo, sanguinem ejus de manu tua requiram." Ergo si delinquentem non convenimus, si non audientem non corripimus, si pertinacem non coërcemus, committimus in mandatum, et tanquàm inobedientiæ rei jure exhæredamur. Jure patronatûs, quo ejus sumus liberi, quoniam, cum effemus servi peccati, facti sumus liberi justitiæ per ejus gratiam, obligamur ei ad reverentiam et obsequium. Unde quoniam nemini, nisi salvâ ejus fide, tenemur obnoxii, si sit contra eum, in dispendium ecclesiæ, pertinaciter, meritò, si non punimus commissum, pro eâ parte sollicitudinis in quam vocati sumus, collatum revocabit a nobis ob ingratitudinem ipse solus beneficium, ex quo verè apparebimus ingrati.

Proponitis nobis periculum ecclesiæ Romanæ, jacturam temporalium, periculum quidem nostrum et nostrorum: nec fit mentio de periculo animarum. Intentatis etiam comminatorium de recessu Domini Regis, quod absit, a fidelitate et devotione Romanæ ecclesiæ. Absit, inquam, ut Domini nostri Regis devotio et fides, ob temporale commodum vel incommodum, à fidelitate et devotione discedat ecclesiæ. Quod quidem criminale et damnabile esset in privato, nedum in principe, qui multos secum trahit post se. Absit etiam, quod quis ejus fidelis hæc unquam cogitare debeat, nedum dicere subjectus aliquis, nedum episcopus. Videat discretio vestra, ne oris vestri verba inficiant aliquem, vel plures, in animæ suæ

suæ dispendium et damnationem, ad instar calicis aurei, qui dicitur Babylonis, interiùs et exteriùs veneno illiniti, de quo cum quis biberit, non timeat venenum, cum viderit aurum, et sic in publicum veniat vestri operis effectus. Ille enim, qui non fallitur, opus furtivum producit in lucem, et machinationes denudat iniquas. In tribulatione quidem et sanguinis effusione consuevit ecclesia crescere et multiplicari. Proprium enim est ecclesiæ, ut tunc vincat cum læditur, tunc intelligat cum arguitur, tunc obtineat cum deseritur. Nolite ergo, fratres, super ipsam flere, sed super vos ipsos, qui facitis vobis nomen, sed non grande, ex hoc facto et dicto ex ore omnium; qui provocatis in vos Dei odium et universorum; qui paratis innocenti laqueum, qui cuditis novas et ingeniosas rationes in subversionem libertatis ecclesiæ. Fratres, per misericordiam Dei, in vanum laboratis. Stabit enim ipsa ecclesia, etsi sæpius concussa, in eâ fortitudine et firmitate, in quâ firmiter fundata est, donec filius ille perditionis surgat, quem non credimus de partibus occidentalibus adscensurum, nisi perversè mutatus fuerit ordo rerum, et series scripturarum. Si verò de temporalibus agatur, plus timere debemus animæ periculum, quàm temporalium. Scriptura verò dicit, *Quid prodest homini totum mundum lucrari, animæ verò suæ sustinere dispendium?* Periculum itaque nostrum et nostrorum penitus abjicimus. Non enim timendus est ille qui corpus perdit, sed qui corpus et animam.

Arguitis nos super suspensione venerabilis fratris nostri Saresberienfis episcopi, et excommunicatione Joannis illius schismatici ex-decani, priùs, ut dicitis, inflictâ pœnaliter, quàm de cognitione processâ legitimè, quàm de ordine judiciorum canonicè proditâ. Respondemus quoniam utrumque istorum notavit iusta pœnæ sententia, illum suspensionis, excommunicationis istum. Si perfectè tenetis negotii seriem, si rectè attenditis judiciorum ordinem, non erit, ut credimus, hæc vestra sententia. Hoc quidem habet autoritas, quæ vos latere non debet, quoniam in manifestis et notoriis non desideratur ista cognitio. Perpendite diligentius, quid actum sit à Saresberienfi super decanatu post domini papæ prohibitionem et nostram, sub excommunicatione factam, et tunc rectiùs intelligetis, si de manifestâ inobedientiâ suspensio rectè sequitur. Unde beatus Clemens; *Si praelatis suis non obedierint cujuscunque ordinis universi, omnesque principes tam inferioris quam superioris ordinis, atque reliqui populi, non solum infames, sed etiam extorres a regno Dei, et consortio fidelium, et à liminibus sanctæ Dei ecclesiæ alieni erunt.*

De Joanne de Oxeneford dicimus, quia diversis modis excommunicantur diversi: Alii lege eos denunciante excommunicatos, alii sententiâ notati, alii communicatione et participatione excommunicatorum. Illum

verò, quoniam incidit in hæresim damnatam communicando schismaticis, et domini papæ excommunicatis, reatumque et maculam excommunicationis in se contraxit, quæ pestis, more lepræ, inficit et intingit, consimilique pœnâ facientes et consentientes confundit; et quoniam contra domini papæ mandatum expressum, et nostrum, sub anathemate, decanatum Saresberiensem excommunicatus usurpavit, denunciavimus, et excommunicavimus, et excommunicatum firmiter tenemus. Et quod de eo factum est in decanatu, et super decanatu, cassavimus et cassatum tenemus, sicut et dominus papa jam ipsemet cassavit autoritate octavæ synodi, cujus hæc est sententia: *Si quis palam vel absconsè cum excommunicato locutus fuerit, aut junctus communione, statim in se contrahit excommunicationis pœnam.* Et concilium clarè dicit: *Qui communicaverit cum excommunicato, si clericus est, deponatur.* Videat ergo discretio vestra, ne quis vestrûm cum eo communicaverit. Calixtus enim Papa dicit: *Excommunicatos quosque a sacerdotibus nullus recipiat ante utriusque partis examinationem justam, nec cum eis in oratione, aut in cibo aut potu, aut osculo communicet, aut ave eis dicat. Quia quicumque in his vel aliis prohibitis scienter excommunicatis communicaverint, juxta Apostolorum institutionem simili excommunicationi et ipsi subjacebunt.* Hic est ordo canonicus, non canonibus, ut credimus, incognitus, sed autoritate canonum fultus.

Et ne miremini, si quandoque condemnatur absens. Legite Paulum, qui absens publicè fornicantem cum noverca sua, non convictum testibus, non confessum, etiam absentem, cujus crimen omnes sciebant, et non arguebant, sicut vos istius, quem non de jure defendit regia potestas, ejecit a cœtu fidelium, et judicavit eum tradi Sathano in interitum carnis, ut spiritus salvus fieret, sicut nos istum. Cæterùm quoniam hoc tempore in partibus nostris multa hujusmodi, et satis gravia, in absentia nostrâ fiunt enormia, quæ de cætero, sicut absentes corpore, præsentés tamen autoritate, salvâ animi nostri conscientia, præterire non debemus, nec possumus, incorrecta, tibi, frater Londoniensis, qui nôsse debueras illud Gregorii septimi, *Siquis episcopus fornicationi presbyterorum aut diaconorum, vel crimini incestus, in suâ parochiâ, pretio, precibusve, sive gratiâ interveniente consenserit, vel commissum autoritate sui officii non impugnaverit, a suo suspendatur officio.* Illudque Leonis: *Si qui episcopi talem consecraverint sacerdotem, qualem esse non liceat, etiamsi aliquomodo damnum proprii honoris evaserint, ordinationis jus ulterius non habebunt, nec ulli unquam sacramento intererunt, quod immerito præstiterunt.* Quoniam in istorum sententiam canonum, sicut pro certe audivimus, deliquisti dupliciter, mandamus tibi, et in virtute obedientiæ mandando

mandando injungimus, quatenus, si ita est, infra tres menses post istarum susceptionem literarum, venerabilium fratrum vestrorum coëpiscoporum consilio, de tanto excessu sic studeas te offerre correctioni et satisfactioni, ne cæteri tuo exemplo in consimile delictum incidant, et nos pro negligentia tuâ debeamus tibi severius mandatum proponere.

Opponitis nobis contra metum gravaminum, non remedium per appellationem, sed impedimentum, quo minùs, sicut intelligimus, exerceamus adversum malefactores, invasores bonorum ecclesiasticorum, disciplinæ censuram ecclesiasticæ; ne in dominum nostrum regem, vel terram suam, in personas vestras et ecclesias, aliquid statuamus eo ordine, quo progressi sumus contra Saresberiensem, sicut dicitis, et ejus decanum. Absit à nobis, ut aliquid in eum vel terram suam, in vos et ecclesias vestras, inordinatè statuerimus vel statuamus. Sed quid est, si eo delinquitis modo, vel consimili, quo jam deliquit Saresberienfis, numquid hac appellatione potestis suspendere auctoritatem nostram, ne in vos vel ecclesias vestras severitatis disciplinam exerceamus, si delicti enormitas hoc exiget? Advertite diligentius, si hæc legitima appellatio, et quæ sit hæc appellationis forma. Scimus quoniam omnis appellans aut suo nomine appellat, aut alieno. Si suo, aut à gravamine quod ei infertur, vel quod timet sibi inferri. Certum tenemus, quòd nullum vobis gravamen, Deo gratias, a nobis illatum est, unde debeatis ad appellationis confugere remedium. Nec credimus vos ad præsens habere causam adversum nos aliquam, quæ specialiter vestra sit. Si contra metum gravaminum, ne quid de cætero statuam in vos vel ecclesias vestras, videte si sit iste metus qui debeat cadere in homines constantissimos; si hæc sit appellatio quæ debeat suspendere omnem auctoritatem et potestatem nostram, quam habemus in vos et ecclesias vestras. Creditur verò a sapientibus, credimus et nos, eam nullius esse momenti, tum quia formam appellationis habere non videtur, tum quia rationi consentanea non est, immò totius juris penitus auxilio destituta.

Si alieno appellastis nomine, aut Domini Regis, aut alterius. Si non alterius, Domini Regis. Si Domini Regis, certè nōsse debuerat discretio vestra quoniam introductæ sunt appellationes ad propulsandam injuriam, non ad inferendam; ad sublevandos oppressos, non ad amplius opprimendos. Unde si quis, non confidentiâ justæ causæ, sed causâ afferendæ moræ, ne contra eum feratur sententia, appellaverit, hujusmodi appellationem non esse recipiendam. Quis enim erit ecclesiæ status, si, subversâ ejus libertate, si, rebus ejus occupatis ac detentis, episcopis à propria sede expulsis, vel non pacificè cum omni securitate omniumque

ablatorum restitutione admissis, raptores, occupatores, invasores, ne coërceantur, liberè appellaverint, et se defenderint per appellationem? Quæ erit ista ecclesiæ destructio? Videte quid agatis, quidque dicatis. Nonne vicarii Christi estis, nonne vices ejus in terra geritis, nonne vestrûm est convenire, corripere, coërtere malefactores, ut vel sic desistant ecclesiam Dei persequi? Ut quid non nimis est, si ipsi sævierint in ecclesiam, nisi et nos, pro eis, vobis ipsis et ecclesiæ in ejus perniciem opponatis? Quis unquam audivit hæc mirabilia? Et audietur et prædicabitur in omni populo et gente, suffraganeos Cantuariensis ecclesiæ, qui cum metropolitano suo, ob defensionem ecclesiæ ejusque libertatis, deberent vivere et mori, omniaque sustinere dispendia, velle ad mandatum regium, quantum in ipsis est, suspendere potestatem ipsius et auctoritatem, ne severitatis disciplinam exerceat in delinquentes adversus ecclesiam. Unum certè scio: Duorum personam simul gerere non rectè potestis, appellantium et appellatorum. Vos estis qui appellastis, vos estis adversum quos appellatur. Nonne una est ecclesia, et vos de corpore ejus estis? En certamen satis legitimum, satis canonicum, ut qui membra sunt ecclesiæ ineant certamen cum capite suo, quod est Christus. Timeo, fratres, ne, quod absit, dicatur de vobis, *Isti sunt sacerdotes qui dixerunt, ubi est Dominus? Et tenentes legem nescierunt eam.* Præterea discretionem vestram latere non credimus, quoniam non solent audiri appellantes, nisi quorum interest, aut quibus mandatum est, aut qui negotium gerunt alienum. Interestne vestra, ut non coërceantur delinquentes adversus ecclesiam? Absit. Immo certe contrarium. Si verò qui subvertit ecclesiæ libertatem, qui bona ipsius invadit et occupat, ac in suos convertit usus, in sui defensionem minimè super hoc auditur appellans, multò minus et pro eo appellantes. Ergo nec Domino Regi suffragatur à vobis pro ipso edita, nec videtur vobis prodesse pro ipso appellatio emissa. Unde si in hoc casu appellare non potest, nec mandare, sic nec vos super hoc ab ipso mandatum suscipere. Adjicimus etiam vos in parte istâ nullatenus ejus gerere posse negotium. Nemo enim episcoporum alterius contra se negotium gerere potest, maximè in oppressione ecclesiæ, cujus ipse defensor est; et præsertim unde generaliter læditur ecclesiæ conditio. Ergo si nec vestra interest appellare, nec super hoc mandatum valetis suscipere, nec alienum gerere negotium, nec auditur appellatio vestra, nec de jure tenetur. Est-ne ista devotio, consolatio vestra, paternæ charitatis affectus metropolitano vestro, pro vobis omnibus exulanti, a fraternitate vestrà exhibitus? Indulgeat vobis Deus hanc inclementiam. An ignoratis, fratres, quòd chaos magnum, in fraudem legis et canonum, inter nos et vos firmatum sit, ut non possit aliquis de nostris
fine

sine discrimine capitis, vel captionis, vel truncationis membrorum, ad vos transire; etsi de vestris aliqui liberiùs possunt, si vellent, ad nos transmeare? Et idcirco miramur, quem ordinem exigitis, ubi nullus ordo circa nos, circa ecclesias vel ecclesiasticas personas, sed horror, qui utinam sempiternus non sit, et injuriæ observantur; cum spoliati simus, et nostri. Quorum quidam, tam clerici quàm laici, capti, redempti sunt post appellationem factam apud Northampton, et vestram adversum nos. Cum etiam, post istam, quam dicitis, appellationem, edictum generale sit propositum, sicut dicitur, ut nemo de nostris inventus sit in terrâ Anglicanâ, qui non capiatur; nemo vestrum vel aliorum amicorum nostrorum literas nostras vel nuncios audeat suscipere. Est hæc reverentia appellationi debita, exhibita, et observata, infra cujus tempus, si justa est, nil innovari oportet: Vos ipsi videritis. Quo ergo jure, quo ordine desideratis à nobis literas vestras et nuncios benignè suscipi et audiri? Non hoc ideò dicimus, quidquid nobiscum agatur et cum nostris, ut quidquam circa personam Domini Regis vel terram suam, circa personas et ecclesias vestras unquam inordinatè fecerimus, vel per Dei misericordiam facturi simus.

Credebamus quidem, si rectè intelligitis, si cupitis utiliter ecclesiæ subvenire, de nimis ordinatâ et longâ patientiâ magis à vobis culpari, quam de severitatis morâ commendari. Mora enim trahit ad se periculum. Quia nimis ordinata patientia plus habet remissionis quàm commendationis, plus vitii quàm virtutis. Et inde est, quòd breviter vobis dicimus et affirmamus constanter, Dominum nostrum Regem nullatenus fore injustè gravatum, si adversus eum, à Domino Papâ et à nobis ipsis, legitimè literis et nuntiis ac sæpius conventum, satisfacere, cum possit, nolentem, severitatis censura processerit. Non enim injustè gravatur, quem jus punit legitimè. Et ut omnia brevissimo fine concludam, certum tenete, quoniam raptores, invasores, occupatores bonorum ecclesiæ, ejusque libertatis subversores, nec tuetur juris autoritas, nec appellatio defendit. Præterea, fratres, si cupitis ei prodesse, prout justum est, quod et nos cupimus, novit Deus, qui scrutator est cordium, procurete ei subvenire illo modo, quo non offendatis in Deum, non in ecclesiam, non in ordinem vestrum; quo etiam expeditius et salubrius animæ suæ periculum, quod jam in foribus est, valeat evadere. Hæc idcirco diximus, si, inspirante ei divinâ clementiâ, de consilio vestro satisfecerit ecclesiæ, gaudebit ipsa de filii sui reversione, et cum gratiarum actione et devotione multiplici parata fuit et est semper eum suscipere. Gaudebimus et nos. Judicium verò vestrum, quo dicitis eum satisfacere volentem, paratum

paratum etiam satisfacere, si super aliquo de libertatibus ecclesiæ inter ipsum et nos, sicut dicitis, orta est contentio, quod quidem satis miramur si alicui vestrum hoc est in dubium, cum toti ferè mundo sit notum; quoniam non est consentaneum rationi, immò penitus juri contrarium, si non suscipimus, immò quia non suscipimus, in quo delinquimus? Estne causa ista sufficiens, estne peremptoria, quo minùs sæpissimè et canonicè conventus, non satisfaciens, injurias superaddens injuriis, severitate divinâ coërceatur? Absit. Scimus enim vos nullâ ratione in hac causâ judicis officio inter ipsum et nos fungi posse. Jam quia adversarii ejus estis et esse debetis in eâ ob defensionem libertatis ecclesiæ, cujus partis defendendæ, officii vestri necessitate, cura vobis commissa est, et sollicitudo credita: Quam si negligenter omittitis, si periculose dissimulatis, vos ipsi videritis. Tum quia non legimus superiores ab inferioribus, metropolitanos maximè à suis suffraganeis, judicari posse. Tum quia nobis et ecclesiæ quidam vestrum suspecti sunt, utinam non omnes! diversis rationibus, quas in præsentis tacemus.

Audiat itaque Dominus meus postulationem fidelis sui, consilium episcopi, patris exhortationem, ut beneficiat ei Deus, et augeat dies ejus, et annos filiorum ipsius in tempora longa. Permittat ecclesiam frui pace et libertate sub ipso, tanquam sub Rege Christianissimo; ecclesiam Romanam uti jure et libertate in terrâ suâ, quam habere debet, et habet in cæteris regnis. Restituat Cantuariensi ecclesiæ et nobis jura sua et libertates, et omnia ablata cum pace et securitate nostrâ, ut liberè et quietè possimus Deo militare sub ipso, et ipse debeat obsequio nostro uti, prout ei placuerit, salvo honore Dei et ecclesiæ Romanæ, et ordine nostro. Istæ sunt dignitates Regiæ, leges optimæ, quas petere debet Rex Christianissimus et observare; quibus gaudere debet et sub ipso florere ecclesia. Istæ sunt leges obtemperantes legi Divinæ, non derogantes, quas qui non observaverit, inimicus Dei constituitur. *Lex enim Domini immaculata, convertens animas.* De legibus enim suis dicit Dominus, *Leges meas custodite.* Et propheta, *Væ qui condunt leges iniquas, et scribentes scripserunt injustitias, ut opprimerent pauperes in judicio, et vim facerent causæ humilium populi Dei.* Non erubescat ergo Dominus meus redire ad cor, humiliari in cordis contritione et humilitatis mansuetudine coram Domino, satisfacere ei et ecclesiæ ipsius de illatis injuriis. Cor enim contritum et humiliatum Deus non despicit, sed amplectitur sincerius. Sicut et Sanctus David, qui cum peccasset, humiliavit se coram Domino, petivit misericordiam, et obtinuit veniam. Sic et Rex Ninive et civitas tota, cum interminata esset subversionis severitas, quoniam in cinere et cilicio humiliavit se Domino, mutatâ sententiâ meruit ultionis

tionis censuram contritione cordis et lachrymarum compunctione redimere.

Non hæc, fratres, vobis scribimus, ut facies vestras confundamus, sed ut lectis literis nostris et intellectis, valeatis et velitis officii vestri necessitates fortiùs et validiùs exercere. Opto vos de cætero semper meliùs agere, ut sit nobis pax celerior, et amplior libertas ecclesiæ. Orate pro nobis, ut non deficiat in tribulatione istâ fides nostra, sed et securè possimus dicere cum Apostolo, *Quia neque mors, neque vita, neque angeli, neque aliqua creatura poterit nos separare à charitate Dei, quæ subiecit nos tribulationi, donec veniat qui venturus est, qui faciet nobiscum misericordiam suam, et ducet nos in terram promissionis, terram fluentem lacte et melle, quam non dabit nisi diligentibus se.* Valete omnes semper in Domino; et instantiùs oret, petimus, pro nobis tota Anglicana ecclesia. *

N° VI.

Ep. cviii. Lib. i. Tho. Cantuar. Archi-episc. Gilberto Londoniensi Episcopo.

Thomas Cantuariensis Ecclesiæ humilis Minister Gilberto Episcopo Londoniensi, quod semel hoc iterum, sic transire per bona temporalia, ut non amittat æterna.

This refers to
B. 3. P. 427.

MIRANDUM et vehementer stupendum, Virum prudentem, sacris literis eruditum, præsertim Religionem habitu præferentem, adeò manifestè, ne dicam irreverenter, et timore Dei, postposito, averfari veritatem, justitiæ resistere, et ad omne fas nefasque confundendum, statum sanctæ Ecclesiæ, quam ipse fundavit Altissimus, velle avertere. Veritas est quæ dicit; *Portæ inferi non prævalebunt adversus eam.* Non sani igitur capitis esse dignoscitur, qui intentat ei ruinam; homini similis montem magnum fune circumligatum tentanti dejicere. Sed nunquid irâ vel odio deferbui, ut exacerbatus jaculari compellar hujusmodi verba in fratrem meum, et collegam et coëpiscopum meum? Absit. Sed de literis tuis, quas mihi per archi-diaconum tuum destinandis accepi, talia collegi. Neque enim de spinis uvas, aut ficus de tribulis colligere potui. Ut clareat an ita sit, proponamus eas, et continentiam earum in lucem proferamus. Finis collatus principio similitudinem

* There are many faults in the printed Bruxelles Edition of the foregoing Letter, which have been mended here from the manuscripts, and particularly the Cottonian; but from the obscurity of some sentences I apprehend that some errors remain in all the copies that I have been able to consult.

scorpionis conformat : Illo blandiens ad nos ingreditur, illo pungens nos acerbè silentium nobis imponere machinatur.

Quid enim aliud est primò recognoscere debitam nobis subjectionem, et subjectioni coherentem obedientiam promittere, demum, ne obedire debeas, ad appellationem convolare? Nunquid apud me sunt *est et non*, dicit Apostolus. Sed neque apud Apostoli deberent esse discipulum. Necessariò acceperunt discipuli a Domino potestatem calcandi super serpentes et scorpiones. Habitat enim Ezechiel et hodiè cum scorpionibus. Et illud vide quo sensu dixeris : *Ad appellationis remedium confugimus*. Christi sequelam te dicis : in hoc dicto secus inveniris. Omnium enim malorum nostrorum efficax, immo efficacissimum remedium commendavit nobis Christus obedientiam, non solum verbo, sed evidentissimo exemplo, factus obediens patri suo usque ad mortem. Et in quâ fronte appellas remedium obedientiæ impedimentum? Quod non remedium, sed detrimentum rectius debet nominari. Sed et quâ fiduciâ hoc præsumis? sperasne te habiturum defensorem ad non obediendum illum, qui vindicandi in omnem inobedientiam et officium accepit et præceptum? Malè est hoc sperare de eo, et in ipsum graviter offendere. Poterant te retardare ab hujusmodi præsumptione, quas jam passus es, prima et secunda repulsio. Viva quippe vox tua primùm, et deinde literæ tuæ ad persuadendum compositæ, expertæ sunt quam firmiter stet, quàm sit vicarius Petri, quem non precibus, non donis, nec comminationibus, vel promissis, movere potuisti. Sed tertiò attentandus est, ut Domini sui exemplo tertiâ attentatione triumphum reportet.

Porro, ut nihil deesset gravaminis, defixisti terminum tuæ appellationi anni ferè spatium : Nec misertus es nostri exilii, vel laboris sanctæ ecclesiæ, sponsæ Christi, quam ipse sibi suo sanguine acquisivit. Et, ut hæc omittam, non omittenda tamen, providere debueras, cui te favere dicis, Domino nostro Regi, qui quamdiu sic aget in nos, vel in ecclesiam Christi, nec ad bella procedere, vel in pace degere, sine animæ suæ periculo poterit. Ad reliqua transeamus. Quædam commemoras turbata esse in discessu et ex discessu nostro. Timeanturbationis hujus authores et consiliarii, ne et ipsi turbentur. Magnis me laudibus extollis, quasi de bono principio meæ peregrinationis. Est quidem sapientis famam non negligere, sed discreti est nulli magis de se quàm sibi credere. De injuriis insimulor, quasi illatis Domino nostro Regi. Sed, quia nullam designas ex nomine, nec ego scio cui respondere debeam. Quia igitur superficie tenus accusor, superficie tenus in hac parte me excuso. Hoc tamen interim accipe responsum, quia nullius mihi conscius sum, nec propterea justificatus sum. De comminatorio minaris, quod nos in

eum misimus. Quis pater videt filium aberrare, et tacet? Quis virgâ non percutit, ne gladium incurrat? Desperat pater de filio, quem comminatione non corripit vel flagello? Absit autem ut tecum sentiamus Dominum nostrum Regem, impatientem correptionis, ad exterminationem Apostasiæ lapsurum. Non enim patris cælestis plantatio eradicabitur. Navem concutit sævissima tempestas: Clavum teneo, et ad somnum me vocas. Congeris et statuis ante oculos nostros beneficia nobis à Domino nostro Rege collata, et de exili me commemoras ad summa provectum. Ut autem his aliquantisper respondeam, in insipientiâ meâ tamen, de quàm exili, putas? si tempus, quo me in ministerio suo præstituit, respicias, archidiaconatus Cantuariæ, præpositura Beverlaci, plurimæ ecclesiæ, præbendæ nonnullæ, alia etiam non pauca, quæ nominis mei erant possessio tunc temporis, adeo tenuem ut dicis, quantum ad ea quæ mundi sunt, contradicunt me fuisse. Quod si ad generis mei radicem et progenitores meos intenderis, cives quidem fuerunt Londonienses, in medio concivium suorum habitantes sine querela, nec omnino infimi. Sed ut aliquando, mundi tenebris semotis, judicemur à lumine veritatis, quid gloriosius, nasci de mediocribus vel etiam infimis, an de mundi magnatibus et honoratis; cum dicat apostolus, *Inbonefiora membra corporis nostri abundantiori circumdamus honore?* *Stemmata quid faciunt*, ait gentilis poeta. Quid habet dicere christianus, episcopus, et religiosus? Sed fortassis de exiguitatis meæ memoriâ notam confusionis mihi objicere voluisti. Confundere vero Patrem quantum cedat in reatum ipse videris, ex præcepto, quod de honorando Patre accepisti.

Pro gratiâ vero Regis nobis commendandâ, commemoratione beneficiorum ejus non multum fuit laborandum. Testem enim Deum invoco, nihil sub sole me gratiæ ipsius et salutis præponere: Tantum salva sint quæ Dei sunt et sanctæ ecclesiæ. Non enim aliter poterit feliciter regnare vel securè. Esto, quia ita est. Multo sunt plura, etiam ampliora, quam tua explicet oratio, beneficia ejus erga me. Debuine pro his omnibus, vel etiam si centuplicarentur, ecclesiæ Dei libertatem exponere? Quantò minus pro famæ meæ, quæ sæpius à vero deviat, conservatione? Si minus in aliis egi, in hoc nec tibi nec alii parco, nec angelo, si descenderit de cælo; sed statim, ut audiero talia commonentem, audiet ex me; *Vade retro, Sathana, non sapiis quæ Dei sunt*. Absit a me ista dementia: Avertat a me Deus dementiam istam, ut aliquatenus persuadeam aliquibus tergiversationibus inire commercium de Christi corpore, unde ego Judæ venditori, et Dominus meus Judæis affimiletur emptoribus Christi.

De promotione verò meâ, quam scribis factam matre Domini Regis dissuadente, Regno reclamante, ecclesiâ, quoad licuit, suspirante, hoc tibi respondeo ; Quod Regni reclamationem non audivimus, sed potius acclamationem. Dissuasio vero genetricis Domini nostri, si fuit, usque ad publicum non prodiit. Potuit autem fieri aliquas ecclesiasticas personas, ad eandem promotionem, ut solet, adspirantes, suspirasse, cum se sentirent ab eâ, quàm conceperant, spe decidere : Qui et hodie fortassis, in ultionem sui casûs, præsentis dissensionis authores sunt et consiliarii. Sed *væ illi, per quem scandalum venit.* Prætaxatis verò obstaculis, et aliis, si quæ fuerunt, Divina prævaluit dispensatio, ut est hodie cernere. Exigor itaque ab eo, qui est ipsa justitia, nulli omninò eum postponere, qui me statuit in gradu isto suâ miseratione.

Illud etiam, quod ad justificandum Dominum Regem videris proposuisse, judicavi non prætereundum leviter, vel absque discussione. Et utinam à justitiâ non dissentiret, et nostra adversus eum minus justa apparet querela. Dicis ipsum ad satisfaciendum semper fuisse paratum. Hoc te confidenter dicere, hoc te asseris prædicare. Sustine igitur paulisper, et ad interrogata responde. Illud quod dicis paratum ad satisfaciendum, quo sensu intelligis ? Illos, quorum se Deus dicit patrem et judicem, orphanos, pupillos, viduas, innocentes, et omninò quæ nos movet controversiæ ignaros, vides proscribi, et taces ; clericos exterminari, et non reclamas ; alios bonis suis spoliari et contumeliis affici, et non contradicis ; servientes meos in vincula conjici et teneri, et obmutescis ; matris tuæ Cantuariensis ecclesiæ bona diripi, et non resistis ; me patrem tuum gladios cervici meæ jam jam imminentes vix evasisse, et non doles : sed quod deterius est, cum persecutoribus meis, et in me Dei et ecclesiæ ipsius, et hoc non in occulto, stare non erubescis. Estne hoc satisfacere, perpetrata mala non corrigere, et malis deteriora de die in diem adjicere ? Sed fortassis illud in contrarium intelligis, ut sit hoc satisfacere, scilicet voluntati impiorum deservire, secundum illud ; *Inebriabo sagittas meas sanguine.*

Sed dicis mihi : *Pater mi, de quibus me calumniaris, absolvo me paucis. Tunicæ meæ timeo.* Verum est, fili mi, et nimis verum respondes. Et ideò gladium non habes. Quod enim scribis, ipsum paratum stare judicio Regni sui, quasi condigna satisfactio sit hæc, quis est in terrâ, vel etiam in cælo, qui de Divina dispositione præsumat judicare ? Humana judicentur, Divina penitus inconcussa relinquantur. Quanto melius, frater mi, illi salubriùs, tibi securiùs, intimares ei, et persuadere modis omnibus elaborares, voluntatem Dei, de conservandâ pace ecclesiæ suæ, de non appetendis his, quæ concessa non sunt ejus administrationi, de

de honorandis sacerdotibus Dei, nec qui sint attendat, sed cujus servi sint.

In Sarisberiensem episcopum, et Johannem de Oxeneford, non decanum, ut dicis, sed decanatus invasorem, me præjudicio abusum calumniaris. Sed meminisse debuisti quædam manifesta præcedere ad judicium. Et motum te dicis. Quidni? *Ucalegon trepidat, paries cum proximus ardet.* Et utinam benè movearis ab eo, in quo non benè fecisti. Sciat ergo et intelligat, te intimante, Dominus meus, quia qui dominatur in Regno hominum, sed et angelorum, duas sub se potestates ordinavit: Principes et Sacerdotes; unam terrenam, alteram spirituales; unam ministrantem, alteram præminentem; unam cui potentiam concessit, alteram cui reverentiam exhiberi voluit. Qui verò his vel illis de suo jure subtrahit, Dei ordinationi resistit. Non indignetur itaque Dominus noster deferre illis, quibus summus omnium deferre non dedignatur, Deos appellans eos sæpius in sacris literis. Sic enim dicit; *Ego dixi, Dii estis, &c.* Et: *Constitui te Deum Pharaonis.* Et: *Diis non detrabes;* Id est, sacerdotibus. Et de eo qui jurgaturus erat, loquens per Moysen ait; *Applica illum ad Deos;* id est, ad sacerdotes. Nec præsumat Dominus noster judices suos velle judicare. Terrenis enim potestatibus non sunt commissæ claves Regni cælorum, sed sacerdotio. Inde scriptum est, *Labia sacerdotis custodient scientiam, et legem requirent ex ore ejus, quia Angelus Domini exercituum est.* Paulus etiam dicit: *Nonne Angelos judicabimus? quanto magis homines?*

Illud etiam, te suggerente, commemoretur Domino nostro, dignum memoriâ et imitatione, quod in ecclesiasticâ historiâ legitur de Constantino imperatore, cui cum oblatae fuissent scripto actiones contra episcopos, accusationis quidem libellos accepit, et accusatos convocans in eorum conspectu eosdem incendit, dicens: *Vos Dii estis a vero Deo constituti: ite, et inter vos causas vestras disponite: quia dignum non est ut nos homines judicemus Deos.* O magnum imperatorem! O discretè regnantem in terrâ; quæ aliena sunt non usurpantem, et Regnum æternum in cælo promerentem! Studeat itaque Dominus Rex tantum, tam discretum, tam felicem imitari principem, cujus et memoria laudabilis frequentatur in terris, et vita perpetua ac gloriosa habetur in cælis. Alioquin timeat quod in Deuteronomio Dominus minatus est, dicens; *Homo quicumque fecerit in superbiâ, ut non exaudiat sacerdotem aut judicem, morietur.* Ad hoc enim vocatus est, et in hoc ipsum temporalis Regni pax, de quâ nos communes, ministratur ei de cælo. Alioquin non salvatur Rex per multam virtutem suam, nec si subdantur ei Regna, et inclinentur nationes.

APPENDIX TO THE THIRD BOOK.

Sed hæc hæcenus. Quoscumque autem prætaxatarum habuisti conscriptores literarum, quod tibi responsum est noverint sibi esse responsum. De cætero, fratres, vos commonefacio, rogo, et obsecro, ut vos non separent schismata, nec obnubilent simultates; sed sit vobis in Domino cor unum et anima una. Et audiamus illum qui dicit, *Pro justitiâ agonizare pro animâ tuâ, et usque ad mortem certa pro justitiâ. Et Deus expugnabit pro te inimicos tuos.* Non obliviscamur illum districtum judicem, ante cujus tribunal constitutos sola nos veritas judicabit, amoto timore et fiduciâ omnis terrenæ potestatis. Valeat in Domino frateritas vestra. *

N° VII.

Articles sent over to England from the King, Ann. Dom. 1166. Cod. Cotton, p. 26. Cod. Vatic. p. 169.

This refers to
B. iii. p. 436.

SCIATIS hunc esse tenorem mandatorum, quem Henricus Rex misit in Angliam. Scilicet, ut omnes portus cautissimè custodiantur, ne literæ interdictionis deferantur. Et si aliquis regularis illas attulerit, pedibus truncetur; si clericus, oculos amittat et genitalia; si laicus, suspendatur; si leprosus, comburatur. Et si quis episcopus ejus interdictionem metuens recedere voluerit, nihil secum deferat præter baculum. Vult etiam ut omnes scholares repatriare cogantur, aut beneficiis suis priventur; et qui remanserint, sine spe remeandi remanebunt. Et Presbyteri qui cantare noluerint, genitalia amittent: omnesque rebelles sibi omnibus beneficiis priventur.

N° VIII.

Ep. cxxviii. Clerus Cantuæ Provinciæ Alexandro Papæ.

Patri suo et Domino, summo Pontifici Alexandro, Provinciæ Cantuariensis Episcopi, et Personæ per eorundem Dioceses locis pluribus constitutæ, Domino Patrique debitum charitatis et obedientiæ famulatum.

This refers to
B. iii. p. 436,
437.

VESTRAM, Pater, meminisse credimus excellentiam, vos devotum filium vestrum, Dominumque nostrum charissimum, illust-

* To this Letter that of the Bishop of London, N° III. from the Cottonian Manuscript, was an Answer. It is transcribed from the printed Bruxelles Edition of Becket's Letters, and some faults are corrected in it from other Copies.

trem Anglorum Regem, per venerabiles fratres nostros, Londoniensem et Herefordensem Episcopos, directis jam dudum litteris convenisse, et de corrigendis quibusdam, quæ Sanctitati vestræ in ipsius regno corrigenda videbantur, paternâ gratiâ commonuisse. Qui, mandatum vestrum debitâ veneratione suscipiens, ut satis notum est, ad vestra quidem monita non iratus intumuit, non elatus obedire contempsit, verum agens gratias paternæ correptioni, Ecclesiæ se statim submisit examini, asserens de singulis, quæ juxta vestri formam mandati sibi diligenter expressa sunt, Ecclesiæ Regni sui se parituro judicio, et quæ corrigenda decerneret, ipsius se consilio, laudabili quidem et in principe dignè commendabili devotione correcturum. Ab hoc verò non recedit proposito, non mentem revocat à promisso. Sit qui sedeat, qui cognoscat et judicet, divini reverentiâ timoris, non majestatem præ se ferens, sed, ut filius obediens, judicio sistere, legitimæque parere sententiæ, et se legibus alligatum principem præsto est in omnibus exhibere. Unde nec interdicto, nec minis, nec maledictionum aculeis, ad satisfactionem urgeri necesse est divinarum se legum examini sponte subdentem. Ejus enim opera nequaquam luci se subtrahunt, nec occultari tenebris ullâ ratione deposcunt. Rex namque fide Christianissimus, *in copula castimonice conjugalis honestissimus**, pacis et justitiæ conservator ac dilatator incomparabiliter strenuus, hoc votis agit, totisque in hoc fervet desideriis, ut de Regno ejus tollantur scandala, cum spurcitiis suis eliminantur peccata, pax totum obtineat atque justitia, et altâ securitate et quiete placidâ sub ipso gaudeant et refloreat universa. Qui, cum pacem Regni sui enormi insolentium quorundam Clericorum excessu non mediocriter aliquando turbari cognosceret, clero debitam exhibens reverentiam, eorundem excessus ad Ecclesiæ Judices retulit Episcopos, ut gladio gladius subveniret, et pacem, quam regebat et fovebat in populo, spiritualis potestas fundaret et solidaret in Clero. *Quâ in re partis utriusque zelus enituit; Episcoporum in hoc stante judicio, ut homicidium, et si quid hujusmodi est, exauctoratione solâ puniretur in Clerico; Rege verò existimante pœnam hanc non condignè respondere flagitio, nec stabiliendæ paci bene prospici, si lector aut Acolythus quemquam perimat, ut solâ jam dicti ordinis amissione tutus existat*†. Clero itaque statuto cœlitus ordini deferente,

* Mr. Carte has made use of this expression to prove a new opinion of his own, that after Rosamond, King Henry the Second had no other mistress, and that the charge of incontinence, brought against him by all the contemporary writers, is not well founded. But I think it only proves, that, when this letter was written, he had no publick or scandalous amour.

† This paragraph states clearly the true subject of the controversy between Henry and Becket, and for what cause the latter died a Martyr.

Domino

Domino vero Rege peccatum iusto, ceu sperat, odio persequente, et pacem altius radicare intendente, sancta quædam oborta est contentio, quam excusat, ut credimus, apud Dominum, simplex utriusque partis intentio. Hinc non dominationis ambitu, non opprimendæ Ecclesiasticæ libertatis intuitu, sed solidandæ pacis affectu, eò progressum est, ut Regni sui consuetudines et dignitates, Regibus ante in Regno Angliæ à Personis Ecclesiasticis observatas, et pacificè ac reverenter exhibitas, Dominus noster Rex deduci vellet in medium, et, ne super his contentiosus funis traheretur imposterum, notitiæ publicæ delegari. Adjuratis itaque per fidem, et per eam quæ in Deum spes est, majoribus natu Episcopis, aliisque Regni Majoribus, retroacti temporis insinuato statu, dignitates requisitæ palam prolatae sunt, et summorum in Regno virorum testimoniis propalatae. Hæc est Domini nostri Regis in Ecclesiam Dei toto orbe declamata crudelitas, hæc ab eo persecutio, hæc operum ejus perversorum rumusculis undique divulgata malignitas ! In his tamen omnibus, si quid fuerit periculosum animæ, si quid ignominiosum Ecclesiæ, Regni sui se consilio correcturum, devotione sanctissimâ jamdiu est pollicitus, et constantissimè pollicetur. Et quidem pacis optatum finem nostra, Pater, ut speramus, obtinisset jam postulatio, si non iras jam sopitas, et ferè prorsus extinctas, patris nostri Domini Cantuariensis de novo suscitasset exacerbatio. Verùm hic, de cujus modestiâ redintegrationem gratiæ huc usque sperabamus, ipsum, quem monitis emollire, quem meritis et mansuetudine superare debuerat, per tristes et terribiles litteras, devotionem Patris aut Pontificis patientiam minimè redolentes, cum in pacis perturbatores exercitum nuper ageret, durè satis et irreverenter aggressus est; in ipsum excommunicationis sententiam, in regnum ejus interdicti pœnam, comminando. Cujus si sic remuneratur humilitas, quid in contumacem statuetur ? Si sic æstimatur obediendi prompta devotio, in obstinatum perversitatem quonam modo vindicabitur ? Minis quoque gravibus superaddita sunt graviora. Quosdam namque fideles et familiares Domini nostri Regis, primarios Regni proceres, Regiis specialiter assistentes secretis, in quorum manu consilia Regis et negotia Regni diriguntur, non citatos, non defensos, non, ut aiunt, culpæ sibi conscios, non convictos aut confessos, excommunicationis innodavit sententiâ, et excommunicatos publicè denunciavit. Adjecit etiam ut venerabilem fratrem nostrum, Dominum Saresberiensem Episcopum, absentem et indefensum, non confessum aut convictum, sacerdotali prius et Episcopali suspenderit officio, quam suspensionis ejus causa comprovincialium aut aliquorum etiam fuisset arbitrio comprobata.

Si

Si hic itaque judiciorum ordo circa Regem, circa Regnum, tam præposterè, ne dicamus inordinatè, processerit, quidnam consequi posse putabimus, (Dies enim mali sunt, et occasionem habentes malignandi quàm plurimam), nisi ut tenor pacis et gratiæ, quo Regnum et Sacerdotium usque modò cohaerent, abrumpatur, et nos cum commissio nobis Clero in dispersionem abeamus exilii, aut à vestrà, (quod absit!) fidelitate recedentes, ad schismatis malum in abyssum iniquitatis et inobedientiæ provolvamur? Compendiosissima quippè via hæc est ad omne religionis dispendium, ad Cleri pariter Populique subversionem ac interitum. Unde ne Apostolatûs vestri tempore tam miserè subvertatur ecclesia; ne Dominus Rex et servientes ei Populi à vestrà, (quod absit!) avertantur obedientiâ; ne totum, quod privatorum consilio machinatur, possit in nos Domini Cantuariensis iracundia, adversus eum et ipsius mandata, Domino nostro Regi aut Regno ejus, nobis aut commissis nobis Ecclesiis gravamen aliquod importantia, ad Sublimitatem vestram voce et scripto appellavimus, et appellationis terminum diem Adscensionis Dominicæ designavimus, eligentes apud vos in omne, quod Sanctitati vestræ placuerit, humiliari, quam ad sublimes animi ipsius motus, nostris non id exigentibus meritis, de die in diem tædiosissimè prægravari. Conserve in-columitatem vestram, Ecclesiæ suæ in longa tempora profuturam, omnipotens Deus, in Christo dilecte Pater.

Nº IX.

MS. Cotton. Claudius, B. 2.

Fol. 142. Alexander Papa Henrico Regi Angliæ.

This refers to
P. 439.

MAGNIFICENTIÆ tuæ nuntios, scil. dilectos filios nostros Johannem Cumminum et magist. Radulfum de Tammworth, nobis et ecclesiæ Dei devotos et regiæ sublimitati per omnia sicut credimus fidelissimos, et litteras quas nobis Excellentia tua transmisit, tanto benigniori mente suscepimus, et tanto eos majori gratiâ prævenimus et honore, quanto plenius novimus ipsos a magnifico principe et Rege Christianissimo fuisse transmissos. Cui utique omnem, quam cum Deo possumus, gloriam cupimus et honorem, et ad cujus incrementum modis omnibus, quibus honestè poterimus nos et fratres nostri, ac tota Ecclesia, quanto devotissimæ sinceritatis tuæ affectum in majori sumus necessitate experti, tanto ardentius intendimus aspirare. Non enim tuæ devotionis insignia, nobis tempore tam opportuno exhibita, a nostrâ in posterum memoriâ ulla ratione poterunt.

poterunt divelli, vel in conspectu Ecclesiæ aliquâ desuetudine inumbrari. Petitiones quoque tuas, quas nobis per nuntios jam dictos misisti, in quibus cum Deo et honestate nostrâ potuimus, sicut idem Magnificentiæ tuæ viva voce plenius narrabunt, curavimus executioni mandare. Personas siquidem de latere nostro juxta quod rogasti, licet nobis gravissimum ac difficillimum, hoc tempore maximè, aliquos a nobis emittere videatur, cum fratrum nostrorum, et eorum præsertim quos tu desideras, præsentiam et consilio opus habeamus; illius tam recolendæ ac magnificæ devotionis tuæ quam prædiximus non immemores existentes, ad Sublimitatis tuæ præsentiam duximus destinandas, cum plenitudine potestatis ecclesiasticas causas, quæ inter te et venerabilem fratrem nostrum Thomam Cantuar. Archiepiscopum hinc inde vertuntur, et illam quæ inter eundem Archiepiscopum et Episcopos Regni tui super appellatione ad nos factâ movetur, necnon et alias causas terræ tuæ quas noverint expedire cognoscendi, judicandi quoque, et, prout sibi Dominus administraverit, canonicè terminandi. Eidem quoque Archiepiscopo, ne te, aut tuos, seu regnum tuæ gubernationi commissum, donec causæ illæ debitum fortiantur effectum, in aliquo gravare, vel turbare, aut inquietare attemptet, omnimodis inhibuimus. Verum, si idem Archiepiscopus in te, aut regnum tuum tuæ gubernationi commissum, vel personas regni, interim aliquam sententiam tulerit, nos eam irritam esse et non tenere censemus. Ad judicium autem hujus rei, in argumentum nostræ voluntatis, litteras præsentis, si articulus ingruerit necessitatis, ostendas. Alioquin Serenitatem tuam rogamus et attentius commonemus, ut litteras ipsas, aut earum tenorem, a nullo sciri permittas, sed eas habeas omnino secretas. Illos vero familiares et consiliarios tuos, quos jam dictus Archiepiscopus sententiæ excommunicationis subjecit, personæ de latere nostro transmissæ, Domino auctore, absolvent. Si autem aliquis illorum interim metu mortis laboraverit, præstito secundum ecclesiæ consuetudinem juramento, quod nostro, si convaluerit, debeat super hoc parere mandato, ipsum ab aliquo episcopo vel alio religioso viro et discreto absolvi concedimus. Porro fratribus nostris, quos illuc mittimus, post instantem Domini nativitatem eundi præceptum dabimus, qui, auctore Domino, in mense Januario, iter, sicut credimus, aggredientur. Data Lateran. XIII. Kalend. Januar.

N^o X.

Ep. XLV. l. ii. Alexandro Papæ Thomas Cantuariensis Archiepiscopus.

Amantissimo Domino et Patri Sanctissimo Alexandro, Dei Gratiâ Sanctæ Romanæ Ecclesiæ summo Pontifici, Thomas Cantuariensis Ecclesiæ minister humilis, miser ac miserabilis exul, salutem, et inter omnia pericula firmam et veram obedientiam.

MITTIMUS Sanctitati vestræ latorem præsentium, pro conditione et capacitate, ut credimus, fidelem. Eum, si placet, pro nobis et de nobis, benignè exaudiat clementia vestra, prout decet et expedit miseræ nostræ, quæ jam amicis nostris desperatione facta est tædiosa, utinam non odibilis; vobis, unde magis dolemus, sicut plures judicant, dissimulatione manifestâ non utinam contemptibilis; inimicis nostris etiam compassione miserabilis. Exurge, Domine, et noli tardare amplius. Illumina faciem tuam super nos, et fac nobiscum secundum misericordiam tuam, et cum miseris nostris præ nimia pressurâ deficientibus; salva nos, quia perimus. Non confundamur inter homines, non insultent nobis adversarii nostri, immo Christi et Ecclesiæ, non fiat fortuna nostra in derisum genti et populo, quia nomen tuum invocavimus super nos. Non nobis, Domine, non nobis, sed in nomine Domini Jesu-Christi, fac tibi grande nomen, repara gloriam tuam, revela famæ tuæ nomen, quæ in reversione illius excommunicati et perjuri schismatici, Joannem de Oxeneford loquor, falsâ illius prædicatione in partibus Galliæ vehementer est depressa. (Novit Deus quia non mentior, et, si mihi non creditur, quærat ab his de Gallia, qui honorem vobis magis affectant, qui amplius optant ecclesiæ proventum) Famæ, dico, quæ hætenus apud homines vixit inculpata, quæ inter omnia pericula servata est illæsa, quæ cæteris perditis sola intemerata remansit, quæ ubique locorum sana habebatur et celebris. Resumat itaque vires præceptoris autoritas, reformet nobile factum, prius commendabile, sed malè postea denigratum, ut sentiat garrulus ipse se falsa sparsisse, prædicasse mendacia. Experiatur severitatem qui remissionem demeruerat, perferat ultionem qui abusus est benignitate, ut agnoscat mundus eum reperisse Christi vicarium fundatum in firmâ petrâ, non facile mobilem, non baculum arundineum, sicut magni submurmurant, sed æquitatis et justitiæ

This refers to
B. iii. p. 446,
447.

titiae observatorem, non acceptorem personarum, nemini parcentem in judicio, de juris æquitate fideliter et æquè dispensantem Regi pariter ac privato. Valeat Sanctitas vestra, ut valeamus et nos, et miseri nostri.

N° XI.

Rymeri Fœdera, etc. Tom. I. p. 23, et seq.

Conventio facta apud Dovebam inter Henricum Regem Angliæ et Henricum Filium ejus ex una parte, et Theodoricum Comitem Flandriæ et Filium ejus ex altera.

This refers to
p. 460, l. 3.

A. D. 1163. I. **H**ÆC conventio facta est et scripta apud Doverham 14 Kal. April, inter Henricum Regem Angliæ, et Ducem Normanniæ et Aquitaniæ et Comitem Andegaviæ, et Henricum Filium et Hæredem suum; et Theodoricum Comitem Flandriæ, et Comitem Philippum filium et hæredem suum.

2. Theodoricus Comes Flandrensis, et Comes Philippus, Filius et Hæres suus, fide et sacramento asscuraverunt Regi Henrico, et Henrico Filio et Hæredi suo, vitam suam et membra quæ corporibus suis pertinent, et captionem corporum suorum, ne Rex vel Henricus Filius suus eam habeant ad dampnum suum.

3. Et quod juvabunt eos ad tenendum et ad defendendum Regnum Angliæ contra omnes homines qui vivere et mori possunt; salva fidelitate Lodovici Regis Francorum; ita quod, si Rex Lod. Regnum Angliæ super Regem Henricum, vel super Henricum Filium suum, invadere voluerit, Comes Theodor. et Comes Philippus, si potuerint, Regem Lod. remanere facient, et quærent quocunque modo poterunt, consilio et precibus, per bonam fidem, absque malo ingenio, sine datione pecuniæ, ut remaneat.

4. Et si Rex Lod. in Angliam venerit, et Comitem Theod. vel Comitem Philippum secum adduxerit, Comes Theod. vel Comes Phil. (uter eorum cum eo venerit) tam parvam fortitudinem hominum secum adducet, quam minorem poterit, ita tamen, ne inde feodum suum erga Regem Franciæ forisfaciat.

5. Et, ante necessitatem, infra 40 dies postquam Comes Theod. vel Comes Phil. ex parte Regis Henrici, vel ex parte Henrici Filii sui, legato, vel literis suis, summonitus fuerit, idem Comes mille equites habebit ad portus suos, paratos transfretare in Angliam, in auxilium Regis Henrici, vel Henrici Filii sui, quam citius potuerint.

6. Et

6. Et Rex Henricus vel Henricus Filius suus inveniet eis naves, et mittet eas vel ad Gravelingas, vel ad Witsand.

7. Et tot naves mittet, quod sufficiant tot militibus, ita ut unusquisque habeat secum tres equos: Ita tamen, quod si Rex Henr. vel Henricus Filius suus, has naves simul una vice non miserit, milites remanentes de mille expectabunt ad portum, ab illa die, qua naves cum militibus de portu exhibunt, usque ad totum unum mensem, nisi infra ipsum mensem transierint.

8. Et naves istas salvas faciet Comes Theod. vel Comes Phil. de omnibus suis, et de omnibus aliis hominibus, a quibus eas salvare potuerit, eundo, morando, et redeundo.

9. Et postquam dicti milites in Anglia erunt, fiducias facient Regi Henrico, vel Henrico Filio suo, aut legatis suis, (si requisiti fuerint) de hoc, quod, quamdiu in itinere illo in Anglia erunt, ad proficuum Regis Henrici et Henrici Filii sui erunt, et non quærent quomodo Rex vel Henricus Filius suus perdat terram, vel hominem, sed juvabunt eos, per bonam fidem, ad tenendum et defendendum Regnum Angliæ contra omnes homines.

10. Et, si aliqua alia gens super Regem, vel super Henricum Filium suum, in Angliam venerit, si Comes Theod. vel Comes Phil. ex parte Regis vel Henrici Filii sui, ut prædiximus, summonitus fuerit, infra prædictum terminum, et ante necessitatem, Comes Theod. vel Comes Phil. cum mille militibus in Angliam venient; si non remanserint propter monstrabilem sui corporis infirmitatem, vel terræ suæ amissionem, vel Lodov. Regis Francorum expeditionis summonitionem, vel propter Imperatoris Romani expeditionis summonitionem per totam terram suam, si ipse Comes Theod. vel Comes Phil. tunc temporis ibi sint: et ita, quod nulla prædictarum summonitionum inventa sit per dolum, vel per malum ingenium, vel ad ejus adventum et mille militum suorum disturbandum.

11. Et, si aliquis Comes Angliæ, vel alii homines illius terræ, Regi, vel Henrico Filio suo boisiaverint, ita quod Rex, vel Henricus Filius suus, comitatum vel valens comitatum amiserit, Comes Theod. vel Comes Phil. cum mille militibus in Angliam in auxilium Regis, vel Henrici Filii sui, veniet; nisi pro aliqua prædictarum quatuor exoniæ remanserit.

12. Et, si uterque Comes propter hoc remanserit, ita quod neuter eorum venire possit, mittet mille milites in Angliam, in auxilium Regis, vel Henrici Filii sui, ut supra diximus.

APPENDIX TO THE THIRD BOOK.

13. Et si per summonitionem Regis, vel Henrici Filii sui, plures quam mille milites adduxerit, vel miserit, de tot erit quietus in proximo sequenti servitio, quot supra mille adduxerit vel miserit.

14. Et si ex mille militibus defuerint 20 vel 40 et usque ad centum, propter hoc Comes Theod. vel Comes Phil. non amittet conventionem suam erga Regem vel Henricum Filium suum; si, postquam ex parte Regis, vel Henrici Filii sui, Comes Theod. vel Comes Phil. summonitus fuerit, infra 15 dies perficiet numerum.

15. Et homines, qui ad Regem, vel Henricum Filium suum, venerint, vel qui ab illis venient, salve et quiete ibunt et venient per totam terram et per omnes portus Comitis Theod. et Comitis Phil. (et nominatim per totam terram et portus de Bolonesio) quicumque ipsi sint, vel undecumque veniant; nec naves defendentur eis in aliquo portuum, ubi eas convenienter conducere voluerint.

16. Et nec Comes Theod. nec Comes Phil. denegabit licentiam hominibus de terra sua, qui ad servitium Regis Angliæ, vel Henrici Filii sui, venire voluerint; et, si venerint, propter hoc non amittent terram, nec feodum, nec conventionem aliquam, quam habeant de Comite Theod. vel de Comite Phil.

17. Et si Comes Theod. vel Comes Phil. vel homines sui, in auxilium Regis, vel Henrici Filii sui, venerint, quamdiu in Anglia fuerint erunt ad victum Regis, vel Henrici filii sui; et Rex, vel Henricus Filius suus, reddet eis perdita sua, facta in Anglia, sicut mos est reddere familiæ Regis Angliæ.

18. Et quamdiu illa necessitas duraverit, erunt cum Rege, vel Henrico Filio suo, et ei fideliter servient; et, finita necessitate, permittet eos Rex, vel Henricus Filius suus, redire, et inveniet eis naves, et Comiti Theod. vel Comiti Phil. eas salvas cum hominibus suis et pecuniis suis remittet.

19. Et inimici Regis, vel Henrici Filii sui, qui sibi werram, vel per terram, vel per mare, facient, fiduciam in neutro Comitum habebunt; nec receptaculum in terra sua, nec in terra Bolonesii, nec alibi, quæ Comes Theod. vel Comes Phil. eis defendere, vel auferre, possit, absque omni dolo et malo ingenio.

20. Et si aliquis hominum Comitis Theod. vel Comitis Phil. Regi, vel Henrico Filio suo, vel hominibus suis forisfecerit, et rectitudinem, pro neutro Comitum, Regi, vel Henrico filio suo, vel hominibus suis, facere voluerit; nec in Comite Theod. nec in Comite Phil. nec in hominibus

bus eorum fiduciam habebit, nisi consensu et voluntate Regis, vel Henrici Filii sui.

21. Et si Rex, vel Henricus Filius suus, Comitem Theod. vel Comitem Phil. in Normannia vel Cænomania secum habere voluerit in auxilio, et eum inde summonuerit, ipse Comes cum mille militibus ibit illuc, et Regem, vel Henricum Filium suum, per bonam fidem iuvabit, sicut Amicum et Dominum, de quo feodum tenet; nec dimittet quin eat, donec Rex Franciæ judicari faciat Comiti Theod. vel Comiti Phil. quod non debeat iuvare Dominum et Amicum suum Regem Angliæ, vel Henricum Filium suum, cujus feodum tenet; et hoc per pares suos, qui Comitem Flandriæ de jure debent judicare.

22. Et istas summonitiones nec Comes Theod. nec Comes Phil. ullatenus diffugient, nec illi, qui hanc summonitionem facient, dampnum vel malum habebunt per Comitem Theod. vel Comitem Phil. nec per aliquem hominem de quo eos Comites prædicti defendere possint.

23. Quod si Rex, vel Henricus Filius, Comitem Theod. vel Comitem Phil. in Normannia secum in auxilio habere voluerit, et eum literis, vel legatis suis, summonuerit, Comes summonitus, ad Regem, vel ad Henricum Filium suum, cum mille militibus veniet: qui postquam in Normannia fuerint, octo diebus erunt ad victum Comitis Theod. vel Comitis Phil. Et si Rex, vel Henricus Filius suus, eos diutius in servitio suo retinere voluerit, morabuntur cum ipso in servitio suo: Et, quamdiu eos retinere voluerit, liberationes suas eis dabit, et perdita eorum, in servitio suo facta, eis restaurabit; sicut mos est facere familiæ suæ.

24. Et si illo tempore Rex Lod. super Regem, vel Henricum Filium suum, in Normanniam intraverit, Comes Theod. vel Comes Phil. ad Lod. Regem Franciæ ibit cum 20 militibus tantum, et omnes alii prædicti milites remanebunt cum Rege, vel cum Henrico Filio suo, in servitio et fidelitate sua.

25. Ipse vero Comes Theod. vel Comes Phil. veniet ad Regem, vel Henricum Filium suum, in Normanniam, sicut prædictum est; nisi remanserit propter apparentem sui corporis infirmitatem, vel terræ suæ amissionem, vel suam expeditionem, vel Regis Francorum, vel Imperatoris Romani expeditionem, sicut supra scriptum est.

26. Et, si propter hoc Comes summonitus remanserit, mille milites, ut prædiximus, in Normanniam, ad servitium Regis, vel Henrici Filii sui, mittet.

27. Et si Rex, vel Henricus Filius suus, in Cænomania eum secum habere voluerit, ipse ibit cum quingentis militibus semel in anno, et erit in familia Regis, vel Henrici Filii sui, per unum integrum mensem, in

Cænomannia, si Rex vel Henricus Filius suus eos tamdiu retinere voluerit ad liberationem Regis, vel Henrici filii sui, et ad perdita reddenda, sicut mos est familiæ Regis. Et hoc idem faciet eis Rex, vel Henricus Filius suus, ex quo intrabunt in Normanniam, ad eundem in Cænomanniam.

28. Quod si Comes Theod. vel Comes Phil. per summonitionem Regis, vel Henrici Filii sui, plures quam mille milites in Normanniam, vel plures quam quingentos in Cænomanniam duxerit, vel miserit, quot supra mille in Normanniam, vel supra quingentos in Cænomanniam duxerit, vel miserit, de tot erit quietus in proximo sequenti servitio horum duorum servitiorum Normanniæ vel Cænomanniæ.

29. Quodcumque Comes Theod. vel Comes Phil. Regi, vel Henrico Filio suo, semel in anno fecerit, per hoc quietus erit de altero servitio in illo eodem anno, nisi gratia amicitiae fecerit.

30. Et, si Comes Theod. vel Comes Phil. in expeditione fuerit, quando hanc summonitionem habuerit, post reditum de expeditione habebit respectum usque ad finitas tres hebdomadas; et eundem respectum habebit, si summonitus fuerit inter proximos octo dies post reditum de expeditione; et, si infirmus fuerit, habebit respectum mittendi milites usque ad finitos 15 dies.

31. Et, pro ista conventionem et securitate, et pro servitio supradicto, dedit Rex Henricus et Henricus Filius ejus post eum, Comiti Theod. et Comiti Phil. Filio ejus post eum, quingentas marcas, unoquoque anno, in feodo; scilicet, comiti 400 marcas, et Comitissæ Flandriæ 100 marcas. Et, si Comitissa decesserit, tota pecunia Comiti persolvetur.

32. Et, pro hoc feodo, per istas conventiones prædictas, et quia Comes Theod. hominum fecerat Regi Henrico avo istius Regis Henrici, Comes Phil. fecit hominum isti Regi Henrico.

33. Et, de omnibus istis conventionibus attendendis, dederunt Comes Theod. et Comes Phil. Henrico Regi, et Henrico filio suo, istos obsides; Cononem Castellatum de Brugis, pro 100 marcis; Eustachium de Grumims Camerarium, pro 100 marcis. Ernold. Comit. de Githnis, pro 100 marcis; Widonem Castell. de Bergis, pro 100 marcis; Walter de Tenremunt, pro 100 marcis; Roger. Castellat. de Curtrai, pro 100 marcis; Rathonem de Gavera Pincernam, pro 100 marcis; Roger. de Waverino Dapiferum, pro 100 marcis; Balden de Ballolio, pro 100 marcis; Robert. Advocatum Betoniensem, pro 100 marcis; Terril de Aloft, pro 100 marcis; Mich. Constab. pro 100 marcis.

34. Et

34. Et, de istis 12 obsidibus, debent sex eorum conducere prius dictos milites in servitio Regis, vel Henrici Filii sui, si Comes Theod. et comes Phil. defuerint, propter aliquam prædictarum exoniarum. Et, si sex de obsidibus non fuerint ad conducendum, duo, ad minus, de eis illos conducent, et quatuor de baronibus Comitum, (loco illorum quatuor qui defuerint) æque valentes ad servitium Regis, vel Henrici Filii sui.

35. Et isti prædicti 12 obsides tali conditione sunt obsides; si Comes Theod. et Comes Phil. de prædictis conventionibus exierint, vel alter eorum, et ipsi eum, infra tres quarentenas, reconciliare Regi, vel Henrico Filio suo, non potuerint, quod unusquisque de prædictis obsidibus dabit Regi, vel Henrico Filio suo, 100 marcas argenti, et facient infra tres quarentenas, vel in captione Regis, vel Henrici Filii sui, se ponent, pro prædictis marcis: Et Rex, vel Henricus Filius suus, ab eis non plus exiget quam quod prædictum est; et ponent se in captione in Turri London, vel in alio loco, ubi Rex, vel Henricus Filius suus eos libere possit retinere ad proficuum suum.

36. Et, si aliquis de istis obsidibus mortuus fuerit, vel a fidelitate Comitum Flandriæ, aut a terra sua, recesserit, Comes alium æquivalentem, in loco ejus, ad summonitionem Regis vel Henrici Filii sui, restaurabit.

37. Et, si, dum obsides jam dictam pecuniam Regi miserint vel Henrico Filio suo, eis in Anglia ablata sit ab hominibus, quos Rex vel Henricus Filius suus constringere possint, quieti erunt.

38. Et, si in mari eam perdiderint, habebunt respectum per 40 dies, ad restaurandam pecuniam.

39. Et, si Regi vel Henrico Filio suo placuerit, Comitissa Flandrensis affecurabit Regi vel Henrico Filio suo, fide sua, pro feodo suo prædicto, quod ad omne posse suum, consilio suo, et precibus suis, faciet Comitem omnes prædictas conventiones tenere integre, et servitia fideliter facere, per bonam fidem, absque omni dolo et malo ingenio.

40. Rex vero affecuravit Comiti Theod. et Comiti Phil. vitam suam, et membra quæ corporibus suis pertinent; et captionem corporum suorum, ne Comites eam habeant ad dampnum suum, quamdiu Comes Theod. vel Comes Phil. prædictas conventiones Regi vel Henrico Filio suo tenuerint.

41. Et, propter prædictas conventiones et prædictum servitium, dabit Rex vel Henricus filius suus Comiti Theod. vel Comiti Phil. prædictas quingentas marcas in natali Domini.

42. Et, si prædicta pecunia in prædicto termino tota persoluta non fuerit infra 40 dies, postquam ipse Rex summonitionem Comitum, per legatum suum in Anglia vel in Normannia, susceperit, illam persolvat.

43. Si vero in aliqua alia terrarum suarum summonitionem inde a legatis comitis susceperit, infra 40 dies, postquam in Angliam vel Normanniam redierit, pecunia persolvetur, sine malo ingenio.

44. Hujus conventionis ex parte Regis et Henrici Filii sui obsides sunt, Rich. de Humez Constabular. pro 100 marcis; Reginald de Sancto Valerico, pro 100 marcis; Rich. de Luscy, pro 100 marcis; Henricus filius Gerald. Camerarius, pro 100 marcis; Bernardus de Sancto Valerico, pro 100 marcis; Manasser. Biset Dapifer, pro 100 marcis; Roger de Cailli, pro 100 marcis; Hugo Comes de Norf, pro 100 marcis; Willielmus Comes de Arundel, pro 100 marcis; Robertus filius comitis de Legra, pro 100 marcis; Galf, pro 100 marcis; Hug. Comes Cestriae, pro 100 marcis.

45. Et isti tali conditione sunt obsides erga Comitem, quali conditione Comitum obsides erga Regem et Henricum Filium suum.

46. Et omnes obsides communiter asscuraverunt quod non diffugient summonitionem, et quod summonitores securi erunt ab eis, et ab omnibus quos prohibere poterunt a nocumento ipsorum.

Nº XII.

Ep. xxxiii. l. ii. Alexandro Papæ Episcopi et Clerus Angliæ.

Patri suo et Domino, summo Pontifici Alexandro, Anglicana Ecclesia devotum et debitum charitatis et obedientiæ famulatum.

This refers to
B. iii. p. 474.

SUBLIMITATI vestræ, Pater Reverende, venerande, gratias affectuosè referimus, quod ad petitionem filii vestri devotissimi, Dominique nostri dilectissimi, illustris Anglorum Regis, filios vestros charissimos, summèque vobis in eâ, quæ ad præsens est, tempestate necessarios, ad ipsum curastis in longinqua transmittere, affectuque paterno, eorundem laboribus, nostris parcere, et gravaminibus nostra piè gravamina sublevare. Habentes itaque mittenti gratias, missos honore debito, totaque cordium alacritate, suscepimus, sperantes eorum adventu finem malis diu jam protractis imponi; et quæ turbata sunt apud nos in pacis pristinae ferentatem, coöperante sibi gratiâ, reformari. Inde est quod eis, tanquàm judicibus ad hoc à Sanctitate vestrâ directis, nostram unà cum Domino nostro Rege præsentiam reverenter exhibuimus, optantes pariter et expectantes omnia, quæ inter Dominum nostrum Regem et Dominum Cantuariensem, quæque inter ipsum vertuntur et nos, in eorum præsentia palam

palam fieri, et, juxta vestri formam mandati, diffinitivâ eorum sententiâ plenissimè terminari. Iplis in modum hunc reverentiam judiciariæ potestati debitam exhibentes adstitimus, et ecce! sinistro confusi nuncio, à priùs conceptâ spe gaudii in desperationis foveam lapsi, audita satis nequimus admirari. Audito enim, et ipsâ legatorum vestrorum confessione recognito, eos ad judicandum causam hanc, ob quam venerant, potestatem omninò non habere, et quod à Sanctitate vestrâ Domino nostro Regi concessum, scriptoque firmatum fuerat, id non tenere, Dominus noster Rex, ultra quàm dici possit, irâ totus incanduit, in tantum quidem, ut ad solitam erga vos animi mansuetudinem vix eum nostra etiam in commune supplicatio revocare potuerit. Totum itaque, quod in adventu legatorum vestrorum conceperamus, gaudii cœpit illicò tristitiæ nubilo superduci. Ad iram hanc fortiùs inflammandam incentiva præbebant ipsa nobilium colloquia, id Domino Regi sæpiùs inculcantia, sibi Regnoque suo nulla jam adversùs Dominum Cantuariensem superesse subsidia, cùm appellatio Regni dudum ad vos facta jam expiraverit, et ei legatorum vestrorum in nullo cura subvenerit. Hinc apud Regni principes tanta exorta turbatio, ut, nisi juxta datam vobis sapientiam pericula jam erumpentia providendo præcluseritis, Christi vestem scindi miserrimè de proximo doleatis. Totis enim studiis Dominus Cantuariensis defudat, ut Dominum nostrum Regem anathemate, Regnumque ejus interdicti pœnâ constringat. Potestatem, quam in ædificationem, et non destructionem ecclesiæ, suscepisse oportuerat, sic exercet in subditos, ut omnes in Regis odium, et totius Regni nobilium tentet inducere, et eorum substantiis direptionem, cervicibus gladium, aut corporibus exilium, intentè studeat procurare. Crebris literis graves eis mandatorum imponit sarcinas, quas præsens ipse non digito movere voluit, nedum humeris sustinere. Ad mortem nos invitat, et sanguinis effusionem, cùm ipse mortem, quam nemo sibi dignabatur aut minabatur inferre, summo studio declinaverit, et suum sanguinem illibatum conservando ejus adhuc nec guttam effundi voluerit. Pro Christi quippè mori gloriosum est: in mortem verò imprudenter irrumpere, Christo scimus non placere. Libertatem prædicat ecclesiæ, quam se Cantuariensi ecclesiæ viribus intrudendo sibi constat ademisse. Regni consuetudines frequenter impropere, quas longè aliter, quàm se res habeat, suis scriptis vestræ celsitudini manifestat. De cætero, sanctorum canonum auctoritatem erga nos non observat, cùm appellantes ad vos post appellationem excommunicet, alios sine citatione aut commonitione suspendat; notoria, quæ nec nota nec veritate subnixa sunt, asserat; et in hunc modum plurima, quâ potest potestate, confundat. Ad hæc, *quadra-*

ginta marcarum millia, vel ampliùs, ut sui asserunt, bonæ suæ fidei commissa, Domino nostro Regi solvere, vel quod justum est exhibere detrectat; et Regi suo negat et Domino, quod nec ethnico denegare debuerat aut publicano. Unde, ne ligent nos jam dicta gravamina, ne taciturnitate nostrâ, et indiscretâ quâdam conniventia permittamus id fieri, unde Dominum nostrum Regem, et Regnum ejus ipsum et sequentes populos, à vestrà contingat obedientiâ. prorsus averti, adversus suspectas nobis D. Cantuariensis sententias, adversus mandata ejus omnia, Domino nostro Regi et Regno ejus, personis nostris et commissis nobis Ecclesiis et Parochiis, gravamen aliquod importantia, vestro nos per omnia committentes consilio et protectioni subdentes, ad audientiam vestram appellavimus, et appellationi terminum diem transitus Beati Martini constituimus.

N^o XIII.

Ep. xlix. l. i. Alexander Papa Thomæ Cantuariensi Archiepiscopo.

This refers to
p. 474, 475.

QUOD minor majorem judicare non possit, et eum præsertim, cui jure noscitur prælationis subesse, et obedientiæ vinculo tenetur adstrictus, tam Divinæ quàm humanæ leges demonstrant: et præcipue sanctorum Patrum statutis id manifestius declaratur. Hæc siquidem nos, quorum interest errata corrigere, et ea, quæ incorrecta perniciosum posteris exemplum relinquerent, sollicitâ consideratione pensantes, attendentes etiam, quòd ex delicto personæ non debet ecclesia jacturam aliquam vel incommodum sustinere, sententiam ab Episcopis et Baronibus Angliæ, quoniam ad primam Regis citationem tui copiam non fecisti, adversum te præsumptuosè prolatam, in quâ tibi jam dicti Episcopi et Barones omnia mobilia tua, tam contra juris formam, quam contra Ecclesiasticam consuetudinem, abjudicârunt; (præsertim cum nulla mobilia præterquàm de bonis Ecclesiæ tuæ habueris;) irritam penitus esse censemus, et eam apostolicâ autoritate cassamus, statuentes ut nullas imposterum vires obtineat, aut tibi vel successoribus tuis sive Ecclesiæ tuæ gubernationi commissæ, aliquod imposterum valeat præjudicium vel læsionem afferre.

N° XIII.

*MS. Cotton Fol. Claudius, B. 2. fol. 268.**Henrico Regi Angliæ Johannes Neapolitanus.*

PLACET nobis plurimum, per omnia gratum duximus et acceptum, quod ad executionem voluntatis vestræ nostra studia promptius advocastis. Nos quidem, licet absque summonitione etiam vestrâ, quotiescunque opportunitas se offert, studiosi semper simus, et solliciti elaboramus, quæcunque vobis utilia, sive ad honorem vestrum cognoscimus proventura, sicut nobis possibile, perficere et promovere, et contraria propensius depellere et longius propulsare, cum etiam Magnitudinis vestræ litteris sollicitamur, tanto fortius accingimur, et ad complementum petitionis vestræ accuratius præparamur; quanquam et ipsa summonitio vestra et sollicitatio plurimum placet, et voti atque desiderii nostri est, ut, quicquid possumus, totum ad vestræ voluntatis arbitrium omni modo exponamus.

This refers to
P. 479.

Venientes igitur ad Ecclesiam Romanam honorabiles nuncios vestros, Abbatem (videlicet) St. Augustini, Archidiaconum Sarisberiensem, Magistrum Simonem de Carcere, et Magistrum Henricum, cum literis vestris, quas Excellentia vestra per ipsos nobis transmisit, honorificè et latè recipimus. Attentè atque sollicitè vestra beneplacita et significata intelleximus, dedimusque cum eis operam studiosam, et exactam diligentiam adhibuimus, quod Dominus noster primam petitionem vestram, vel saltem secundam executioni mandaret. Ut vero omnis conatus noster omneque studium et argumentosa sollicitudo casso labore defecit, nihilque obtinere potuit de hiis quæ juxta petitionis vestræ tenorem postulavit, visum nobis et complacuit quod ad aliud remedium nostra studia converteremus.

Rogavimus igitur, et, licet cum multâ instantiâ, impetravimus tum tales literas à Domino Papâ, per quas temeraria præsumptio et indiscreta audacia Cantuariensis Archiepiscopi repressa et conculcata creditur, et vobis aliquatenus cognoscitur pro qualitate temporis satisfactum. Præfati vero nuncii vestri, qui, sicut industrii et probi viri vobisque fidelissimi, curare executionem mandati studiosissimi extiterunt, cum pro certo novissent, quod nullo modo aliquam de petitionibus vestris obtinere valerent, ad consilium et exhortationem nostram, et quasi compulsionem, receperunt literas illas, quas Dominus Papa per eos vobis mittit. Quamquam enim

plurimum pertimerent et formidarent illas recipere, quia hoc de mandato vestro non habebant, inducti tamen et complusi a nobis, sicut diximus, quod liquido cognovimus nullatenus expedire quod his temporibus literas tales dimitterent, assensum præbuerunt admonitioni nostræ. Nos itaque, quia honorem vestrum puro corde et animo diligimus, et voluntati vestræ in omnibus pro posse nostro obtemperare desideramus, laudamus vobis atque consulimus, quatenus recipientes recipiatis, et gratum ducatis quod Dominus Papa ad præsens vobis concedit, scientes et nullatenus dubitantes, quod, si creditis suggestioni nostræ quam per præfatos nuncios vestros vobis aperimus, Cantuariensis ille videns se omni destitutum auxilio, et cognoscens certissimè quod ad regimen Cantuariensis Ecclesiæ non valeat ulterius aliquâ ratione redire, et ipse spontaneus abrenunciabit, et in aliâ ecclesiâ, ubi vivere possit, sibi provideri suppliciter exorabit.

Nº XV.

Injunctions sent over from King Henry II. Ann. Dom. 1169.
Cod. Cotton, MSS. Claudius, B. ii. p. 27.

This refers to
p. 527.

1. **S**I QVIS inventus fuerit literas ferens Domini Papæ, vel aliquod mandatum Archiepiscopi Cantuariensis, continens interdictum Christianitatis in Angliâ, capiatur, et *de ea sine dilatione justitia fiat sicut de traditore Regis et Regni.*

2. Nullus Clericus, vel Monachus, vel Conversus, vel alicujus Conversionis, permittatur transfretare vel redire in Angliam, nisi de transitu suo habeat literas Justitiæ, et de reditu suo literas Domini Regis. Si quis aliter inventus fuerit agens, capiatur et incarceretur.

3. Ne aliquis appellet ad Papam vel Archiepiscopum.

4. Ne aliquod placitum teneatur de Mandatis Papæ, vel Archiepiscopi, vel *aliquod Mandatum illorum in Angliâ ab ullo homine accipiatur.* Si quis inventus fuerit aliter agens, capiatur et incarceretur.

5. Generaliter quoque interdictum est, quod nullus ferat aliquod Mandatum clerici vel laici Domino Papæ, vel Archiepiscopo. Si quis inventus fuerit, capiatur et incarceretur.

6. Si Episcopi, vel Clerici, vel Abbates, vel Laici, sententiam interdicti tenere voluerint, sine dilatione de terrâ ejiciantur, *et tota eorum cognatio*, ita quod de catallis suis nihil secum ferant.

7. Ut

7. Ut Catalla omnium Papæ vel Archiepiscopo faventium, et omnes possessiones eorum, *et omnium eis pertinentium, cujuscumque gradus, vel ordinis, vel sexus, vel conditionis sint*, capiantur, et in Dominicâ manu D. Regis confiscentur.

8. Ut omnes Clerici, qui redditus habent in Angliâ, sint summoniti per omnes Comitatus, ut infrâ tres menses veniant in Angliam ad redditus suos, sicut diligunt redditus suos; et, si non venerint ad terminum statutum, redditus in manu Regis capiantur.

9. Ut denarii Beati Petri non reddantur ulterius Apostolico, sed diligenter colligantur, et servantur in Thesauro Regis, et expendantur ad ejus præceptum.

There is a tenth article concerning the Bishops of London and Norwich, which I have not translated in my History; because, from letters written at that time, I have reason to believe it was added afterwards. It runs in these words. "Lundoniensis et Norvicensis Episcopi sint in misericordiâ Regis, et summoneantur per Vice-comites et Bedellos, ut sint contrâ Regis Justitias ad rectum faciendum Regi et Justitiis ejus de eo, quod contrâ statuta de Clarendune interdixerunt ex Mandato Papæ terram Comitis Hugonis, et excommunicationem, quam D. Papa in ipsum fecerat, per suas Parochias divulgaverunt sine licentiâ Justitiarum Regis."

N° XVI.

MS. Cotton Claudius, B. ii. fol. 288.

Alexander Papa Rogero Eboracensi Archiepiscopo.

QUANTA per charissimum filium nostrum, Henricum illustrem Anglorum regem, ampliora incrementa et commoda in hujus necessitatis articulo Ecclesiæ Dei pervenisse noscuntur, et quanto nos eum pro suæ devotionis constantiâ majori affectione diligimus et cariorum in nostris visceribus retinemus, tanto ad ea quæ ad honorem, incrementum, et exaltationem ipsius et suorum cognoscimus pertinere promptius aspiramus. Inde est utique, quod ad ejus petitionem dilectum filium Henricum primogenitum filium suum, coronandum communicato fratrum nostrorum, consilio, *ex auctoritate Beati Petri ac nostrâ concedimus in Anglia coronandum.*

This refers to
P. 540, 545.

nandum. Quoniam igitur hoc ad officium tuum pertinet, Fraternitati tuæ per Apostolica scripta mandamus, quatenus, cum ab eodem filio nostro Rege propter hoc fueris requisitus, coronam memorato filio suo *ex auctoritate sedis Apostolicæ* imponas, et nos quod a te exinde factum fuerit ratum ac firmum decernimus permanere. Tu vero debitam ei subjectionem et reverentiam, *salvo in omnibus Patris sui mandato*, exhibeas, et alios similiter commoneas exhibere.

N° XVII.

Chron. Gervase, Fol. 1410, l. 50.

This refers to
P. 547.

IN PRIMIS inquiratur de vice-comitibus et ballivis eorum, quid vel quantum acceperint de singulis hundredis, et singulis villatis, et singulis hominibus, postquam Rex novissimè transfretavit in Normanniam, unde terra vel homines gravati sunt; et quid acceperint per iudicium comitatus vel hundredi, et quid sine iudicio. Et quod inquisierint captum esse per iudicium scribatur separatim, et quod sine iudicio, similiter separatim scribatur, et de omnibus prisas inquirant causam et testimonium.

Similiter inquiratur quot et quas terras vicecomites vel ballivi eorum emerint vel invadiaverint.

Similiter inquiratur de Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vavasoribus, Civibus, Burghensibus, et eorum seneschallis, præpositis, et ministris, quid vel quantum acceperint per terras suas, post terminum supradictum, de singulis hundredis suis vel villatis, et de singulis hominibus suis, per iudicium vel sine iudicio. Et omnes prisas et causas et occasiones eorum scribant separatim.

Similiter inquiratur de omnibus illis qui post terminum illum habuerunt aliquot bailias de rege in custodia, sive de Archiepiscopatu, sive de Episcopatu, sive de Abbacia, vel de Baroniâ, sive de Honore aliquo vel aliqua eschaeta, quid et quantum in bailia illa adquisierint.

Similiter inquiratur de bailivis regis, qui per terram suam erraverunt pro negotiis regis faciendis, quid eis datum sit.

Et de catallis fugitivorum pro assisa de Clarendune, et de catallis eorum qui per assisam illam perierunt, inquiratur quid actum sit, et quid inde exierit de singulis hundredis, et singulis villatis, et singulis hominibus. Et inquiratur an aliquis in assisa illa injuste rectatus fuerit, pro præmio, vel promissione, vel odio, vel aliquo modo injusto; et an aliquis de rectatis relaxatus fuerit, vel reversus, pro præmio, vel promissione, vel amore,

amore; et quis inde præmium acceperit. Et inquiratur de auxilio ad maritandam filiam regis, quid inde exierit de singulis hundredis, et de singulis villatis, et de singulis hominibus, five in redditis, five in pardonis, et cui illud traditum et liberatum fuerit. Et inquiratur quid et quantum acceperint forestarii et bailivi, et ministri eorum, post terminum supradictum, in bailiis suis, quocumque modo illud acceperint, vel quacumque occasione: Et si quid pardonaverint de rectoris Domini Regis pro præmio, vel promissione, vel amicitia alicujus: Et de forisfactis forestarum, et de hiis qui in forestis suis forisfecerunt de cervis et bisfis, et aliis bestiis salvagiis: Et si forestarii vel bailivi eorum aliquem acceperint vel attacaverint [leg attachiaverint] per vadium et per plegium, vel rectoraverint, et postea sine justitia per se relaxaverint. Et qui hæc fecerint, inquirantur et inbrevientur. Et omnes qui rectorati fuerunt de quocumque rector ponantur per vadium et per plegium, quod sint coram Domino Rege die quem eis ponet, et quod rectorum facient, et adretiantur ei et hominibus suis quod adretiare debuerint: et quibus plegii defuerint custodiantur.

Et inquiratur si vicecomites, vel quicumque bailivi eorum, vel Domini Villarum, vel bailivi eorum, aliquid reddiderint de hiis quæ acceperant, vel si pacem aliquam cum hominibus fecerint postquam audierunt adventum Domini Regis, pro disturbare, ne inde ante Regem vel Justicias querimonia veniret.

Et de amerciatis inquiratur, si aliquis relaxatus fuerit pro præmio, vel amore, de hoc quod primo fuit amerciatus; et per quem hoc factum fuerit. Et similiter inquiratur per omnes Episcopatus, quid et quantum et qua de causa Archidiaconi vel Decani injuste et sine judicio ceperint; et hoc totum scribatur. Et inquiratur qui debent Regi homagium, et nondum fecerunt neque illi neque filio suo, et inbrevientur.

The Preamble to this runs thus.

Rex autem, convocatis optimatibus suis, instituit abbates et clericos, comites, et milites, qui circuierent terram, dans formam inscriptam, quomodo eis esset agendum. In Cantiam, Suthreiam, et Middelsexe, et Berkefcire, et Oxenefordscire, et Bukingehamscire, et Bedefordescire missi sunt Abbas Augustini Cantuariæ, Abbas de Chertescie, Comes de Clara, Wilhelmus de Abrancis, Manesier de Dammartin, Geroldus filius Radulfi, Gilebertus de Pinkeni, Wilielmus filius Helt, Willielmus filius Nigelli, Willielmus filius Martini, Radulfus de Hospitali, Radulfus de Dene. Hi omnes simul supradictos comitatus circuierunt. In hunc modum per alios comitatus Angliæ inquisitores missi sunt. Et hæc inquirere debuerunt.

Postea

APPENDIX TO THE THIRD BOOK.

Postea capient sacramentum ab omnibus Baronibus, militibus, et liberis hominibus de Comitatu, et cæteris hominibus, et ab omnibus Civibus et Burgensibus, quod verum dicent de hoc quod ab eis inquireretur ex parte Domini Regis, et quod non celabunt veritatem neque pro alicujus amore, nec prece, nec pretio, nec timore, nec pro aliquâ promissione, nec pro ullâ re.

N° XVIII.

Ex Epistolis S. Thomæ Cantuar. Edit. apud Bruxell
MDCLXXXII. *Epist. XL. lib. iv.*

Thomas Cantuariensis Archi-episcopus Roberto Vigornensi Episcopo.

This refers to
P. 553.

VIR illustris Robertus Comes Gloucestræ, Pater vester, cum plures haberet filios, vos ampliori præ cæteris affectu traditur dilexisse, eò quod vos in senectute genuerit, et totum, prout indoles pollicebatur, prudentiæ suæ et virtutum fomitem, Dei coöperante gratiâ, transfudit in sobolem, quam utpotè pretiosissimam ab ineunte ætate Domino consecravat. Intuemini, quam prudens, quàm fidelis, quàm magnanimus, quàm constans fuerit ille, qui florentis, pugnacis, gratiosi, generosi Regis, et opulenti, ejusdemque Normannorum Ducis, et Boloniæ Comitis, vires aggressus oppressit: et non modò Regno privatum, sed et captivum, conjecit in vincula, adeoque fortunam indignantem, habitâ fidei et virtutis ratione, contempsit, ut pro reparandâ sacramenti religione nulla exhorruerit subire pericula; et tandem captus incarcerari maluerit, quam soror ejus et Domina juris sui dispendium pateretur. Qui, licet invidiâ fortunæ captus fuerit, vincula- tus tamen judicio sapientum tantus habitus est, ut liberationem ejus commutandam et emendam censuerint Rege et Regno. Contemplatio viri clarissimi vobis adjiciat antimos; et eum, qui vos generosi sanguinis titulo illustravit, coætaneis et posteris repræsentate moribus et virtute. Huc accedit colendæ virtutis nobilior titulus, pontificalis apex, qui sicut episcopale officium fideliter adimplentes ampliori gloriâ et honore coruscantes illustrat, sic timidos et ignavos abjectiori vilitate reddit inglorios. Sal enim insatuatum ad nihilum utile est, sed tantâ abjectione vilescit, ut nec stercorebus comparetur, quibus agrorum infœcunditas propulsatur. Nam ut ait Martyr Cyprianus, *Episcopus si timidus est, actum est de eo: actum*, inquit, quia cùm ipsum timor mundanus effœtum reddiderit, superest

superest ut ad omnia salubriter agenda inutilis sit. Charitas ergo timorem hunc expellat, ut populi ducem expediat, quia deficientis timore ducis exhortatio nequaquam militum potest animos ad fortia roborare. Et quidem nutu divino credimus accidisse, ut vos, ad propulsandam matris vestrae, sanctae scilicet Cantuariensis ecclesiae, injuriam, diebus his contigerit transfretare, quo praesentialiter resistere possitis eis, sicut nobis promissistis, qui eam gratis diutius afflixerunt, adhuc sine causa quaerunt animam ejus, ut auferant eam.

Quod ut, Dei praeeunte gratia, commodius facere valeatis, vos literis Domini Papae, tanquam armis bellicis, praemuniendo esse decrevimus, ut fratrum nostrorum corda possitis efficacius in Domino confirmare. Rogamus itaque et obsecramus in Domino Jesu Christo, et in virtute obedientiae, et in periculo officii, honoris, et beneficii praecipimus, quatenus literas Apostolicas, quas vobis mittimus, ostendatis venerabili fratri nostro Rogerio Eboracensi Archiepiscopo, et aliis fratribus et Coepiscopis nostris, et inhibeat is auctoritate Domini Papae, ne praefatus Eboracensis filio Domini Regis consecrationis munus dare, aut coronam, si hoc ab eo petatum fuerit, praesumat imponere. Sub eadem interminatione praecipimus, ut similiter hoc inhibeat is Episcopis Londoniensi et Saresberienfi, et ceteris, si quis hoc ausus fuerit attentare. Hoc autem, Deo teste et iudice, non in Domini Regis, aut filii sui, aut cujuscumque vel Ecclesiae vel Personae, ex conscientia nostra mandamus injuriam, sed ex necessitate, quam cogimur Ecclesiae Cantuariensis jura pro viribus conservare. Parati enim sumus, si Domino Regi placuerit, filium suum coronare pro debito officii nostri, et utrique honorem debitum et reverentiam exhibere. Non vacillet in his implendis, frater charissime, fides vestra, quia fidelis est Deus, qui vos supra vires tentari non patietur.

Confidite ergo in ipso qui vicit mundum, et memineritis quoniam qui timet pruinae irruit super eum nix, et qui declinat arma ferrea frequenter incidit in arcum aeneum. Degeneres animos timor arguet, et fortiter ausos juvabit gratia, gloria coronabit. Quidquid agant alii, nobis persuasum est, quod constantiam vestram nullius turbinis impetus franget, quod quae de ore vestro processerunt, et tam vestro quam Episcopi Lexovensii scripto continentur, et sub utriusque charactere impressa sunt et expressa, non erunt irrita. Absit enim ut generosus sanguis sit animae degenerantis habitaculum, ut per vos tituli patrum oblitterentur, ut quaecumque trepidatio mentis, aut ignavia operis, evincat Patris, qui vos omnibus liberis praetulit, errasse iudicium, et antiquae charitatis excludat affectum. Nam, ut pie creditur à fidelibus, ille felicius

cius in Deo, quam in liberis vivit, et studiosis operibus aut reprobis gratiam ejus promereri potestis aut demereri.

Nº XIX.

Epist. xi. l. 5.

Thomæ Cantuariensi Archiepiscopo quidam Amicus.

This refers to
P. 554, 555.
B. 3.

REX primâ Dominicâ die Londoniis debet esse, eoque Archiepiscopum Eboracensem, omnesque Angliæ Episcopos et Barones, ad diem illam, ex omnibus terræ partibus convocavit. Sane eâ die coronabit filium Regis Eboracensis, uxore ejus, filiâ scilicet Regis Francorum, apud Cadomum derelictâ, et quasi repudiatâ, in contumeliam Patris et contemptum. Coronabitur certè puer ille quem diximus, nisi Dominus mare clauferit navigare volenti, vel manus contraxerit Eboracensi, vel nisi Rex Francorum aliquo prohibitionis modo inhibuerit. Puer enim properat ad mare, et a patre expectatur in adverso littore. Et, de mandato Regis, Baiocensis et Sagiensis cum puero vadunt. Ricardus de Humet non ibit. Regina Cadomi morabitur, donec gaudii hujus certitudinem acceperit. Literæ ergo Domini Papæ super prohibitione consecrationis hujus diu est quod mare transferunt; sed inutiles prorsus effectæ in manu illius cui traditæ sunt perierunt, nec alicui ostensæ, nec ullatenus propalatæ. Quid igitur profunt quæ sic occultantur, per quas nec coronæ impositio nec personæ unctio cessabit? Certissimè enim sciatis hoc sine dilatione futurum. Etsi non auderet Eboracensis, manus cruentas apponeret *carnifex* Sagiensis. Hoc autem fit contra vos, ut nec diutiùs liceat etiam sperare de pace, cui non solum pax differtur, sed tota spes pacis et reconciliationis aufertur. Dixit enim nobis Richardus de Welcestre, qui pro accelerando transitu pueri venit, alterâ die, usque Cadomum, et statim reversus est cum illo; dixit, inquam, ille, quod pacem vestram omnibus modis differret, et si aliter non posset, non solum Domino Papæ, sed etiam ipsi Deo inobediens Rex usque ad mortem existeret, ante quàm vobiscum pacem haberet. Nolite ergò sperare in iniquitate, nec Templariis illis credite, qui non ambulant in simplicitate, sed Regis potius, quam vestram voluntatem exequi cupientes, vobis nihil aliud quàm mendacia, de Rege et Patre mendacii, adferunt, ut decipiant. Quicquid enim Rex agit vobiscum dolus est et nequitia. Sed, ut pace vestrâ loquar, stultum decipit
verbis.

verbis inanibus, ut interim sibi magis provideat, et de tractu temporis contra vos majores infidias paret, et laqueos præparet fortiores. *Quid igitur facies, hominum miserrime, si tibi fuerit sub temporis brevitæ subtractum ad quod tantis temporibus suspirasti: si per alium Rex fuerit affectus qui non nisi per te regnare debuerat?* Immo quid facies, si inimicus tuus Regem tibi consecravit inimicum, ut contra te, in Patris auxilium, quantò junior, tantò fortior, manus insurgat? Verùm quid faciet Rex ipse Francorum, cujus ita filia contemnitur, cui regnum auferitur, cujus speranda posteritas condemnatur? Cur enim ejus filius, qui adhuc ei fortassè nascetur, Regni gloriam consequeretur, si ipsa modò coronæ indigna judicatur? Forsitan non movebitur Rex ille nimium justus, nec suum filiæque contemptum vindicabit, sed magis in suâ justitiâ peribit. Moderatè loquor in Christum Domini, sed tamen pro nihilo ei coronam Franciæ deferet qui coronam Angliæ tam faciliè aufert. Unicum ergò et singulare ei et vobis remedium est, ut, sine omni dilatione, ad Reginam et ad Richardum de Humet nuncios mittat, qui ex suâ parte prohibeant ne fiat, et, si factum fuerit, ab utroque cum diffiduciâ separentur. Sic enim territi Richardus et Regina mittent ad Regem, et Regis impediatur voluntas. Nuncius enim Regis Francorum, vel vester, nullus posset ad Regem nostrum accedere. Et, si literas Domini Papæ deferret, mitteretur in carcerem; si Regis Franciæ, teneretur honestè, sed non procederet, donec negotium ad aures Regis perveniret. Currite ergò statim ad Regem, et advocate Senonensem, ut aliquod opponatur obstaculum huic operi, quod, in Personæ Regis contemptum, et in causæ vestræ præjudicium, noscitur agitari. De cætero sciatis Thomam, novum Archidiaconum Bathonensem, nuper à Rege ad Archiepiscopum Rothomagensensem venissè, et à Nivernensi Episcopo transeundi inducias impetrassè usque ad sequentem Dominicam. Publicè enim Thomas ille clamavit, et multi alii quotidie clamant, Regem in proximo esse venturum: Quod penitus est falsissimum. Per Episcopatus ergò et Abbatias, et per domos Regias, usque ad montem S. Michaëlis formicino gradu Nivernensis incedit, et qui in terrâ suâ quindecim esset contentus, triginta sex equitaturas adducit. Dicitur ergò, quod magis sitit pecuniam Regis, quàm pacem Regni; magis lucrum suum, quàm commodum vestrum. Et res satis manifestis indiciis declaratur. Sextâ enim feriâ post octavum Pentecostes venit Cadomum, unde tunc filius Regis exierat, cum quo Nivernensis optimè, si vellet, transire potuisset. Sed dicitur ei Regem citò esse venturum, aut navem Regiam venturam propter ipsum. Et sic homo ille, mores gentis vestræ penitus ignorans, fallaciis capitur, nec in manu ejus verbum Domini prosperatur. Verùm,

si astutias istas intelligeret, si concito gradu ad mare properaret, haberet Archiepiscopum præire, et istum Regis responsum expectare. Et, si omninò vellet transire, navem quidem et instrumenta navis inveniret, sed gubernator nullus appareret. Singuli enim fugerent, vel se nihil scire dicerent, vel ventum penitus esse adversum jurarent. Stultus ergò fuit, si veniendi per vos voluntatem habuit, qui per Flandriam ire disposuit. Statim ergò literas Regis, et literas Senonensis, et nuncium vestrum, ad Nivernensem dirigite, ut cum omni celeritate Reginam Cadomi morantem conveniat, quatenus ei transitum paret. Quæ si noluerit ob manifestam impossibilitatem, idem Episcopus ad vos revertatur, facturum citius quod facturum est. *Nolite enim de cætero parcere, sed totum spiritum effundite, totum gladium evaginate, quoniam non respiciet vos oculus Regis usque in sempiternum.* Respiciat autem super vos et super oves pascuæ suæ oculus Pietatis Divinæ, et magis de principibus victoriæ gloriam, quàm principum pacem non veram, Ecclesiæ suæ conferre dignetur. Valete. Et, si adversitas increbuerit, nolite timere, quia Dominus supponit manum suam.

Nº XX.

Ep. xlv. l. v. Alexandro Papa Thomas Cantuariensis Archiepiscopo.

Serenissimo Domino et Patri Charissimo, Alexandro Dei gratiâ summo Pontifici, Thomas S. Cantuariensis Ecclesiæ minister humilis, salutem et omnem cum summa devotione obedientiam.

This refers to
P. 563, 591.
B. iii.

MISERATIONIS oculo respexit Deus Ecclesiam suam, et tandem tristitiam ejus in lætitiâ commutavit. Nec dubium, Pater, quin, si nobis vera dicentibus ab initio fuisset creditum, cornua retunderentur eorum, qui ventilabant, conterebant, et variis plagis vulnerabant Ecclesiam, ut, exterminatâ prorsus libertate ejus, et evacuatâ autoritate Divinæ Legis, vigerent consuetudines *aut potiùs abusiones veterum tyrannorum*, Romanus Pontifex nesciretur in Anglia, et sponsæ Christi privilegia sine reparationis spe delerentur. Ecce enim ad novissimas literas vestras, quibus Domino Regi Anglorum innotuit, quod ei ulterius non parceretis, sicut nec pepercistis Frederico dicto Imperatori, cum intellexisset terram ejus, amotis omnibus subterfugiis, interdicto subjiciendam esse,

esse, et Episcopos, si qui fortè non obedirent, suspendendos et excommunicandos, illicò nobiscum pacem fecit, ad honorem Dei, et maximam, ut speramus, Ecclesiæ utilitatem. Nam de consuetudinibus, quas tantâ pertinaciâ vindicare consueverat, nec mutire præsumpsit: Nullum à nobis vel aliquo nostrorum exegit juramentum. Possessiones, quas occasione diffensionis hujus ecclesiæ nostræ abstulerat, prout eas in chartulâ expresseramus, nobis concessit: pacem, et securitatem, et redditum, omnibus nostris promisit, et osculum, si tamen vellemus eum eatenus perur-geri: *ut non modò in omnibus articulis victus appareret, sed ut perjurus diceretur ab hiis, qui audierant ipsum jurasse, quòd non erat nos eâ die in osculo recepturus.* Nos autem, habito plurium sapientium consilio, et maximè Domini Senonensis, qui pacem nostram cæteris sollicitiùs et efficacius procurabat, cum ipso ad colloquium Regis accessimus, quem, Deo faciente, qui omnes illos amoverat qui sanctitatem vestram variis dolis circumvenire soliti sunt, adeò mutatum invenimus, ut, quod sine circumstantium admiratione non contigit, animus ejus in nullo videretur à quietis consiliis abhorrere. Nam, ut nos procul adventantes conspexit, à circumfusâ turbâ exiliens occurrit properus, et, capite detecto, nos in salutationis verba prorumpere gestientes salutatione prævenit, et habitis paucis sermonibus, solis nobis præsentibus cum Domino Senonensi, nos, illo divertente, stupentibus universis, traxit in partem, et diu tantâ familiaritate collocutus est, ut videri posset, nunquàm inter nos aliquam fuisse discordiam. Omnes ferè, quotquot aderant, lætissimâ admiratione stupentes, plurimorum genis lacrymarum imbre madentibus, glorificabant Deum, et benedicebant beatam Magdalenam, in cujus solemnitate Rex conversus est à viis pristinis, ut toti terræ suæ lætitiâ reformaret, et ecclesiæ redderet pacem. Corripuimus eum, adhibitâ moderatione quam oportuerat adhiberi, vias quibus inceserat, et pericula quæ undique imminebant patenter ostendimus. Rogavimus et monuimus ut rediret ad cor, ut dignos fructus pœnitentiæ faciens, et Ecclesiæ, quam non mediocriter læserat, manifestâ boni compensatione satisfaciens, purgaret conscientiam, et redimeret famam: Nam ab iniquis consiliariis potius, quàm à propriæ voluntatis instinctu, grave utriusque dispendium patiebatur. Cùm autem hæc omnia, non modò patienter, sed et benignè, audiret, et emendationem promitteret, adjecimus sibi necessarium esse ad salutem, et liberis suis ad incolumitatem et indemnitatem concessæ divinitus potestatis, ut in eo Sanctæ Cantuariensi Ecclesiæ, Matri suæ, diligentius satisfaceret, in quo eam nuper gravissimè læserat: Nam filium suum, contra jus antiquissimum Ecclesiæ nostræ, fecerat enormiter corona-

ri,

ri, usurpatione Archiepiscopi Eboracensis, qui contra vetustissimam consuetudinem, et post prohibitionem vestram, et etiam in alienâ provinciâ, consecrationem hanc exequi cæcâ nimis et temerariâ ambitione præsumpsit. In quo ille paululum reluctans, protestatus tamen ante, se nihil proponere vel propositurum esse animo contendendi, Quis, inquit, coronavit Regem Wilhelmum, qui sibi Angliam subjugavit, et Reges succedentes? Nonne Eboracensis, aut alius Episcopus, prout illi placebat qui coronandus erat in Regem? Ad quæ nos, quod ex celebri gentis nostræ claret historiâ, respondimus, quod, eo tempore quo Anglia capta est a Normannis, Cantuariensis Ecclesia proprium non habebat Antistitem, sed quasi captiva tenebatur à quodam Stigando, qui illam, sicut et Vintoniensem, et Londoniensem, et Vigornensem, et Eliensem Ecclesiam, publicæ potestatis et amicorum viribus, contra inhibitionem Romani Pontificis, occupaverat, Apostolicæ sedis communione carens et gratiâ. Unde, et de mandato ejus à præfato Rege captus in carcere diem obiit. Quâ necessitate tunc, quod nec ante, nec post, lectum est vel auditum, Archiepiscopus Eboracensis, qui clarioris erat opinionis, illi Regi coronam imposuit. Lanfrancus verò filium ejus, Regem Wilhelmum, cognomento et colore Rufum, consecravit in Regem, præsentem Thomâ Eboracensi Archiepiscopo, nec in eo sibi officio aliquid vendicante. Post cujus obitum, cùm sanctus Anselmus Cantuariensis Archiepiscopus exularet, ex eâdem causâ, quâ et nos, unus suffraganeorum Cantuariensis Ecclesiæ, S. Girardus Herefordensis, vice Archiepiscopi sui tunc absentis, Regem Henricum, non contradicente Archiepiscopo Eboracensi, consecravit. Revertente autem ab exilio Beato Anselmo, accessit ad eum Rex Henricus, tradens ei diadema, et rogans ut eum coronaret, nec imputaret illi quòd ipsum, necessitate Regni præpediente, non expectaverat. Fatebatur enim coram omnibus hanc esse Cantuariensis Ecclesiæ dignitatem, ut Anglorum Reges inungat et consecret. Et hac quidem satisfactione placatus Sanctus Archiepiscopus approbavit quod à suffraganeo suo factum fuerat, et Regi Coronam imposuit. Quarè ergo tunc filuit Eboracensis Archiepiscopus, et sibi Cantuariensis Ecclesiæ suffraganeum præferri sustinuit? Nunquid Thomas Senior, qui Eboracensem regebat Ecclesiam, et Lanfranco Cantuariensi, de literis et amicorum copiâ intumescens, multos labores texuit, et Ecclesiam suam ampliavit in plurimis, hæc obmutuisset, pauperi cedens Episcopo, nisi sibi de Archiepiscopi Cantuariensis Primatu et Dignitate constaret? Deinde, post triginta et sex annos, Regem Stephanum, prædecessorem vestrum, à decessore nostro Wilhelmo fuisse consecratum, præsentem Thurstano Eboracensi

Eboracensi Archiepiscopo, nec se immiscente negotio, aut contradicente, certo certius est. Quo post novem et decem annos in fata collapsa, bonæ memoriæ Theobaldus Cantuariensis Archiepiscopus, qui, pro vestrâ promotione, cum suis omnibus, labores innumeros, damna irreparabilia, et pericula plurima, memoratu et relatu horrenda, sustinuit, et Regnum, quod in aliam familiam jam transierat, Avi vestri liberis restituit, vos inunxit et coronavit in Regem, præsentem isto Eboracensi Rogerio qui nunc est, et, ut scitis, nec coöperante nec contradicente, nec aliquid agente, nisi eo modo quo minimus Episcoporum, sacris indutus vestibus, audiens intererat solemnitati. Cùm ergo tantâ facilitate animi, aut potius consiliariorum vestrorum pravitate, matrem vestram, Cantuariensem Ecclesiam, sine causæ cognitione, jure antiquo spoliastis, quod plusquàm octuaginta annis inconcussè possedisse dignoscitur, nunquid perpetuare voluistis inimicitias inter Ecclesiam et Liberos vestros? Aut, si tantum præsumptionis Eboracensi Archiepiscopo fuerat indulgendum, ut novo Regi munus consecrationis impenderet, cur provinciam suam excedens invasit nostram? cur tam ipsum, quàm suffraganeos nostros, in crimen inobedientiæ impulistis? Receperant enim inhibitionem Domini Papæ, ne hoc in absentiâ nostrâ aliquo modo præsumerent. Denique, si substitutionem filii et consecrationem properabatis impleri, cur eos, quos ab ore Summi Pontificis nominatim, et à nobis, excommunicatos esse constabat, à tanti sacramenti solemnitate non curastis excludere? Nunquid consecratio sine participio execrationis non videbatur implenda? His, et pluribus aliis ad hunc articulum pertinentibus, quæ temporis brevis non admittit, diligenter et modestè propositis, rogavimus attentius, ut hujus læsionis nostræ jacturam, pro amore Dei, et salute sua, et liberorum indemnitate, repararet, et tantæ præsumptionis emendaret excessum. Ille verò se de mandato vestro, quod pridem obtinuerat, adversus hanc petitionem nostram tutum esse respondit, et super hoc literas protulit, quibus constitit Episcopis celebraturis hoc munus sibi indultum esse, ut filium suum faceret à quocunque vellet Episcopo coronari. Ad quod ei respondentes supplicavimus, ut reduceret ad animum quando et quare literas impetrasset, quibus suum et Episcoporum defendere nitebatur excessum. Constabat enim eas, quando Cantuariensis Ecclesia vacabat, eo proposito fuisse impetratas, ne Eboracensis Archiepiscopus, si præfatam Cantuariensem Ecclesiam diutiùs vacare contingeret, ad innovandi Regis coronationem præ cæteris provinciæ nostræ Episcopis auderet aspirare. Et ut, Domine mi Rex, hæc fidentiùs et familiariùs recollatis, nonne tunc palam solebatis asserere, quod filium vestrum malletis decollari, quàm ut sæpè dictus Eboracensis capiti ejus hæreticas.

hæreticas manus imponeret ? Certum verò est quòd priori mandato per posterius derogatur. Esto ergo quod tunc tales literas impetraveritis, nostræ verò, quia posteriores sunt, illis debuerant derogasse: unde constat vobis, et aliis sapientibus, cujus momenti habendum sit quod contra jus usurpatum est, præsertim cùm Regis consecratio, sicut et alia sacramenta, de jure causam habeat, et totam substantiam nanciscatur. Neque hæc dicta videantur, quòd degradari velimus filium vestrum, aut in aliquo minorari; quia successus ejus et ampliationem gloriæ exoptamus, et ad eam laborabimus modis omnibus in Domino; sed ut indignationem Dei, et sanctorum, qui in Cantuariensi Ecclesia requiescunt, et graviter injuriati sunt, a vobis et ab illo pariter arceatis. Quod fieri posse non credimus, nisi per condignam satisfactionem; quia à sæculis inauditum est, quòd aliquis Cantuariensem Ecclesiam læserit, et non sit correctus aut contritus à Christo Domino. Subintulit ergo Rex, vultu hilari et voce jucundâ: *Si filium meum diligitis, duplici jure facitis quod debetis. Nam et ego vobis illum dedi in filium, eumque, ut meminisse potestis, recepistis de manu mea. Et ipse vos tantâ affectione diligit, ut aliquem inimicorum vestrorum recto lumine nequeat intueri. Eos enim jam continuisset, nisi obstitisset reverentia et timor nominis mei. Sed scio quòd vos graviùs de eis, etiam quam oporteat, ulciscetur, quàm citò tempus et occasionem acceperit. Nec dubito quin Ecclesia Cantuariensis nobilissima sit inter omnes Ecclesias Occidentis, nec eam jure suo privare volo, quin potiùs, juxta consilium vestrum, dabo operam, ut et in hoc articulo relevetur, et pristinam in omnibus recuperet dignitatem. Illis autem, qui me et vos hætenus prodiderunt, Deo propitio, sic respondebo, ut exigunt merita proditorum. Cùm ergo equo desiliens me humiliarem ad pedes ejus, arrepto scanfili me coëgit ascendere, et visus illachrymari ait: Quid multa? Domine Archiepiscopo, restituamus nobis invicem veteres affectiones, et alter alteri, quod potuerit, bonum exhibeat, et præcedentis odii prorsus simus immemores. Sed mihi, quæso, coram his qui procul adspiciunt, honorem exhibeatis. Et transiens ad illos, quia paucos ibi, quos lator præsentium indicabit, videbat amatores discordiæ, et odii incentores, ait, ut tam illorum quam omnium, nequid male dicerent, ora præcluderet: Si ego, cum Archi-Episcopum ad omne bonum paratum inveniam, ei vicissim bonus non fuero, tunc ero nequior cæteris hominibus, et mala, quæ de me dicuntur, vera esse probabo. Nec aliud consilium honestius aut utilius crediderim, quàm ut ipsum studeam benignitate præcedere, et tam charitate quàm beneficiis superare. Sermonem Regis cum summa gratulatione ferè quotquot aderant,*

rant, exceperunt. Misit ergo ad nos Episcopos suos, qui monerent ut petitionem nostram coram omnibus faceremus. Et, si quorundam ex ipsis consilio credidissemus, in arbitrium ejus contulissemus prorsus et nos et totam causam Ecclesiæ. Nam ab initio usque nunc à Scribis et Phariseis suis egressa est iniquitas, et de autoritate seniorum invaluit, qui debuerant regere Populum. Sed benedictus Deus, qui non permisit, ut in consilium illorum transfret anima nostra, et Ecclesiæ libertatem aut justitiam Dei exponeremus cujuscunque hominis voluntati. Illis autem dimissis, habitâ deliberatione cum Domino Senonensi et Christi pauperibus, sociis peregrinationis et proscriptionis nostræ, in eo firmavimus propositum, ut nec quæstionem consuetudinum, nec damnorum quæ Ecclesiæ nostræ intulerat, nec usurpatæ consecrationis querelam, nec Ecclesiasticæ libertatis aut honoris nostri dispendium, aliquo modo conferremus in arbitrium ejus. Et sic accedentes ad Regem et suos, cum omni humilitate rogavimus per os Domini Senonensis, qui verbi nostri bajulus erat, ut nobis gratiam suam restitueret, pacem et securitatem, tam nobis quàm nostris, Cantuariensem Ecclesiam et possessiones ejus, quas exceptas in chartulâ legerat; et ut misericorditer emendaret quod contra nos et Ecclesiam nostram fuerat in filii sui coronatione præsumptum; promittentes ei amorem et honorem, *et quicquid obsequii Regi et Principi potest ab Archiepiscopo exhiberi in Domino.* Ille verbum acceptans annuit, et nos et nostros qui aderant recepit in gratiam suam. Et quia non præceperatis, ut ipse nobis et nostris ablata restituerit, neque à nobis poterat impetrari, aut poterit, Deo authore, ut ea remittamus, juxta mandatum vestrum repetitio eorum dilata est, non sublata. Nam si, præcepissetis eo vigore, quem in novissimis expressistis, ut restituerentur, haud dubium quin satisfecisset, et posteris dedisset exemplum, toti Ecclesiæ Dei, et maximè Apostolicæ sedi, perpetuò profuturum. Tandem itaque nobiscum multa et diu conferens, cum nos duo soli ferè usque ad vesperam collocuti essemus, secundum morem familiaritatis antiquæ, in hoc convenimus, ut, eo discedente, rediremus gratias acturi Christianissimo Regi, et aliis benefactoribus nostris, reversuri ad ipsum rebus compositis, et aliquamdiu moraturi circa eum, antequàm redeamus in Angliam, ut omnibus innotescat, in quantam familiaritatem et gratiam nos receperit. Expectabimus autem in Franciâ donec redeant nuncii nostri, quos ad recipiendas possessiones nostras destinavimus; quia non est in animo nostro ut redeamus ad ipsum, quamdiu de terrâ Ecclesiæ passum pedis abstulerit. Nam in restitutione possessionum facile advertemus, quâ sinceritate agatur nobiscum. Nec tamen veremur, quin impleat quod promisit, nisi eum præpediant consilarii, quos de pravitate conscientiæ

stimulus quiescere non permittit. Hi siquidem, ne comprehendantur in operibus manuum suarum, errores suos impunitate donari moliuntur, auctoritate et consortio Regiæ Majestatis. Hi nos in sortem Balaamitarum conantur impellere, ut, vivificantes animas quæ non vivunt, criminosos in scelere deprehensos absolvamus sine pœnitentiâ et confessione erroris; quam utique potestatem Deus nec alii indulgit, nec retinuit sibi. Nisi adquieverimus, pacem et concordiam cum Domino Rege initam machinantur infringere. Sed, Deo authore, nec sic nos inducent, ut, sedem ponentes ex adverso Altissimi, gloriemur inaniter nos vivificare aut justificare quos ille non vivificat. Certum enim est quanticumque Pastoris sententiam jure veracissimo non tenere, si Divino judicio reprobatur. Nos tamen sub ipso discessu nostro, sive paci invidens, sive amicis et familiaribus prospicere volens, ad instantiam, sicut dicitur, Gaufredi Cantuariensis Archidiaconi, Exoniensis Episcopus, satis argutè et instanter, Rege, Episcopis, et Proceribus præsentibus, sollicitavit circa articulum istum, dicens oportere, ut, quemadmodum Dominus Rex fideles nostros in gratiam receperat, ita nos omnes qui cum illo steterant in gratiam reciperemus. Cui respondimus, “hîc, si placeret illi, distinctionem necessario admittendam. Nam in eis, quorum advocationem susceperat, erant homines diversæ conditionis, alii nocentiores, alii minùs, alii in communione Ecclesiæ, alii excommunicati, contractu et participatione anathematis, aut sententiâ; alii in summi Pontificis constitutionem inciderant, et sine auctoritate ejus absolvi non possunt; alii, ex variis causis, à nobis vel ab aliis Pastoribus suis justo sunt anathemate condemnati. Proinde in personis et causis tam dissimilibus ratio juris et æquitatis vetat idem esse judicium. Nos autem ad omnes, quantum in nobis est, pacem et charitatem habentes, Domini Regis audito consilio, ad honorem Ecclesiæ Dei, suum, et nostrum, necnon et salutem eorum quibus reconciliatio quæritur, negotium Deo propitio moderabimur, ut si quis eorum, quod absit, pace caruerit, reconciliationis expers, hoc sibi, non nobis, debeat imputare.” Cùm autem ad hæc præfatus Gaufredus Archidiaconus, adhuc excommunicatus, sicut incentor discordiæ, ita et contemptor justæ sententiæ, tumidus responderet, Dominus Rex, ne suborientia hinc inde verba causas odii et sopitæ inimicitiae fomitem instaurarent, nos de turba extrahens, rogavit ne curaremus quæ dicerentur à talibus, et ut, pacato animo et tranquillo, et licentiam et benedictionem dantes, cum gratiâ Dei et suâ rediremus ad hospitium nostrum. Postea verò accepimus, quod venerabiles viri, Dominus Rothomagensis et Episcopus Nivernensis, quos inter nos et Dominum Regem jusseratis esse mediatores, et qui de pace nostra solliciti extiterunt, Episcopo Sagiensi

transeunti in Angliam dederunt in mandatis, ut excommunicatos nostros absolveret, sed incertum est, an ei formam quam illis dederatis præscripserint, aut, si præscripta est, an eam sit idem Episcopus secuturus. Verumtamen nec illis mandare licuit, nisi quatenus potestatem à vobis acceperunt, nec ille aliquid egit, si fines, quos præscripseratis, excessit. Unde si placet, necesse est, ut, si aliter absoluti sunt, præcipiatis eos sententiâ, quâ tenebantur, arctari, donec secundum Ecclesiæ formam jurent, ut ante jusseratis, se vestro mandato parituros, et illis, qui taliter absolvi meruerint, in virtute obedientiæ injungatis, quatenus mandatum, quod eis ex parte vestrâ faciemus, inviolabiliter observent, vel ad vos infra terminum quem præfigetis accedant, ut audiant vestrum, subjectâ pœnâ, nisi paruerint, ut in pristinam sententiam, sublato appellationis obstaculo, reponantur. Neque hæc dicimus, Deo teste, vindictam expectantes, cum scriptum esse noverimus, *non quæres ultionem, nec memor eris injuriæ civium tuorum*; sed ut Ecclesia correctionis exemplo possit per Dei gratiam impofterum roborari, et pœna paucorum multos ædificet. Nam, ut Spiritus S. author, *flagellato pestilente sapiens eruditur*. Nec vigere poterit Apostolicæ sedis autoritas, nisi percellantur et hi, qui Laicorum patrocínio abutentes, excommunicati aut prohibiti præsumpserunt Divina celebrare. Quid enim solus Episcopus, quantumlibet Ecclesiæ Romanæ devotus, poterit, si ab obedientiâ ejus, ad nutum potentum, recesserint sacerdotes et clerus suus? Nihil enim est quod Ecclesiam magis debilitet, quàm quòd Apostolica sedes talia, cum emergunt, facile præterit impunita. Hæc dicentes scimus nobis in his exequendis, si placuerit vobis, magnos, Deo tamen propitio vincibiles, imminere labores: Sed prælegimus arctam et angustam viam sequi, quæ ducit ad vitam, quàm latam et spatiosam, quæ per illecebras sæculi trahit ad inferos. De mandato vestro, damnorum nostrorum ad præsens tacita est repetitio. Placeat Serenitati vestræ, qualiter vos hîc procedere oporteat à latore præsentium exaudire, et injuriam corrigere, quæ nobis et Ecclesiæ nostræ illata est in coronatione filii Regis, alio, contra morem antiquum et mandatum vestrum, invadente jus nostrum et provinciam nostram. Necessitas nos coëgit excedere modum scribendi, timor et reverentia de dicendis plura reprimere compulerunt, sed Apostolica Dignatio et Clementia Paternæ Mansuetudinis immoderationi, si placet, veniam dabit, et quæ dicenda fuerant à latore præsentium solitâ pietate exaudiat, et petitiones, quas per eum porrigimus, celerius jubeat adimpleri.

N° XXI.

Ep. lxx. l. v. Thomas Cantuariensis Archiepiscopus Dilectæ Filiae suæ Idoneæ.

This refers to
P. 583, 584.
B. iii.

THOMAS Dei gratiâ Cantuariensis Archiepiscopus, et sedis Apostolicæ Legatus, Dilectæ Filiae suæ Idoneæ salutem, et perseverantem in virtute Obedientiæ et Justitiæ zelo vigorem. Infirma mundi elegit Deus, ut fortia debellaret, intumescentemque contra Deum audaciam Holofernis, viris deficientibus, Ducibus exanimatis, et sacerdotibus ferè deferentibus legem, feminæ virtus extinxit. Hæster electa est, ut exulantis et condemnatæ Ecclesiæ salutem procuraret. Titubantibus Apostolis, fugientibus, et, quod magis est, in perfidiam lapsis, Dominum passioni addictum persecutæ sunt mulieres; et, quod amplioris est fidei manifestum, etiam mortuo obsecutæ meruerunt Angelorum visu et alloquio confortari, et percipere Dominicæ Resurrectionis primitias, et, latentibus Apostolis et ferè desperatione submersis, redemptoris gloriam et Evangelii gratiam nunciare. Speramus autem te in illarum, Deo authore, transituram esse consortium, quarum Christi zelo succensa apprehendis exemplum. Quia spiritus charitatis, qui à corde tuo timorem expulit, per gratiam suam faciet, ut tibi, licet ardua videantur quæ necessitas Ecclesiæ fieri constantius et instantius exigit, non modò possibilia, sed facilia sint credenti. Hæc ergo de fervore, quem habes in Domino, spe conceptâ, tibi mandamus, et *in remissionem peccatorum injungimus*, quatenus literas Domini Papæ, quas tibi mittimus, Venerabili Fratri nostro Rogerio Eboracensi Archiepiscopo tradas, si fieri potest, præsentibus fratribus et Co-episcopis nostris; aut si eos præsentibus habere nequiveris, hoc ipsum facias in præsentia eorum quos adesse contigerit. Et, ne originale scriptum possit aliquâ tergiversatione supprimi, transcriptum ejus legendum circumstantibus tradas, et eis, prout plenius te nuncius instruet, mentem aperias literarum. Labori tuo, filia, præmium grande proponitur, remissio peccatorum, fructus immarcescibilis et corona gloriæ, quam tandem *Beatæ peccatrices*, Magdalena et Ægyptiaca, deletis totius anteaetæ vitæ maculis, a Christo Domino receperunt. Aderit tibi Magistra misericordiæ, Filium, quem pro mundi salute edidit, Deum et hominem, rogatura, ut

is sit dux, comes, et patronus itineris. Et qui inferni claustra dirumpens Dæmonum contrivit potestatem, licentiam coarctavit, ne tibi nocere valeant, manus cohibeat impiorum. Vale, sponsa Christi, et eum cogites semper esse præsentem*.

Nº XXII.

A Charter of King Henry the Third, in the old English of that Time, enforcing the late Provisions of Oxon.

Rot. Pat. 43 H. III. m. 15. nº 40.

HENRY thurg Godes fultome King on Engleneloande Lhoauerd on Yrloand Duk on Normand. on Aquitain and Eorl on Anjou. send I, greting to alle hise holde ilærde and ilewede on Huntindonn-schiere; thæt witen ge wel, alle thæt we willen and unnen, thæt ure rædesmen alle other the moare del of heom, thæt beoth ichosen thurg us and thurg thæt *Loandes Folk*, on ure Kuneriche habbeth idon, and schullen don in the worthness of Gode, and ure treowthe for the freme of the Loande, thurg the besigte of than to foren iseide rædesmen beo stedefæst and ilestinde in alle thinge abutan ænde, and the heaten alle ure treowe in the treowthe thet heo us ogen, that heo stede-festliche healden and weren to healden and to swerien the isetnesses thæt beon makede and beon to makien thurg than to foren iseide rædesmen, other thurg the moare dæl of heom alswo; alse hit is beforen iseid. And thæt æhcother helpe thæt for to done bitham ilche other agenes alle men [*paucula quædam hic deesse videntur, hæc scilicet aut similia*: in alle thinge thæt] ogt for to done and to soangen. And noan ne mine of Loande ne of egetewher thurg this besigte muge beon ilet other iwersed on oniewise. And gif oni ether onie cumen her ongenes we willen and heaten, thæt alle ure treowe heom healden deadlichistan. And for thæt we willen thet this beo stedefæst and lestinde, we senden gew this Writ open iseined with ure Seel to halden amanges gew ine Hord. Witness us seluen æt Lundænthane egtetenth day on the Monthe of Octobr, in the two and fowertigthe geare of ure crunninge. And thir wes idon ætforen ure isworen redesmen, Bonefac. Archebischop on Kanterbur. Walter of Cantelop, Bischop of Wirechester, Sim. of Mont-

This was omitted in the Appendix to the Second Book, where it ought to have been placed as referring to p. 320 of that Book.

* N. B. Some faults in the printed Bruxelles edition of this, and some other preceding letters, have been corrected from the Cottonian and other Manuscript copies.

fort Eorle of Leichestre, Rich. of Clare Eorl on Glocheſter and on Hartford; Roger Bigod Eorl of Northfolk and Mareſcal on Engleloand, Perres of Sauueye, Will. of Fort Eorl on Aubem, John de Pleſſe Eorl on Warwick, Joh. Gefferees-fune, Perres of Muntfort, Rich. of Grey, Rog. of Mortemer, Iames of Aldithel, and ætforen othre moge.

AND all on tho ilche worden is iſend in to aurichte othre Schire ouer al thare Kuneriche on Engleneloande and ek inter Irelande.

The ſame in Modern Engliſh, translated by Mr. Somner.

HENRY, by God's help, King of *England*, Lord of *Ireland*, Duke of *Normandy*, and of *Aquitain*, and Earl of *Anjoy*, Greeting to all his faithful Clerks and Laics of *Huntingdonſhire*: This know ye all well, that we Will * and Grant that which our Councellors all, or the moſt part of them that be choſen by us, and the † People (or *Commons*) of our Land, have done, and ſhall do, for the Honour of God, and of their Allegiance to us, for the ‡ Benefit (or Amendment) of the Land, by the Advice or Conſideration of our foreſaid Counſellors, be ſtedfaſt and performed in every thing for ever. And we Command all our Liege People in the Fealty that they owe us, that they ſtedfaſtly hold, and ſwear to hold [or keep] and to defend [or maintain] the Statutes [or Proviſions] which be made, and ſhall be made, by thoſe aforeſaid Counſellors, or by the more part of them, alſo as it is beforeſaid; and that they each other aſſiſt the ſame to perform, according to that ſame Oath, againſt all Men, both for to do, and cauſe to be done: And none neither of my Land, neither from elſewhere, may for this be hindered, or damnified in any wiſe: and if any man or woman oppoſe them againſt, we Will and Command that all our Liege People them hold for deadly Enemies; and becauſe we will, that this be ſtedfaſt and laſting, we ſend you this Writ open, ſigned with your Seal to be kept amongſt you in * Store; witneſs our ſelf at *London* the 18th day of the Month of *October*, in the two and fortieth Year of our Coronation; and this was done before our ſworn Counſellors, *Boniface* Archbiſhop of *Canterbury*, *Walter* of *Cantelow* Biſhop of *Worceſter*, *Simon Montfort* Earl of *Leiceſter*, *Richard* of *Clare* Earl of *Gloceſter* and of *Hartford*, *Roger Bigod* Earl of *Norfolk* and Mareſchal of *England*, *Peter* of *Sa-*
voy,

* *Unnen.*

† Loandef-
folke ſigni-
fies the Com-
mon People,
called by us
Folk at this
day. Vid. Dr.
Brady's Com.
Hiſt. p. 68.
‡ Freme.

* *Hord.*

voy, *William of Fort* Earl of *Aubemarle*, *John of Plesſeiz* Earl of *Warwick*, *John Gefferiſſon*, *Peter of Montfort*, *Richard of Grey*, *Roger of Mortimer*, *James of Alditbly*, and before others more.

AND all in theſe ſame words is ſent into every other Shire over the Kingdom of *England*, and alſo into *Ireland*.

END OF THE APPENDIX TO THE THIRD BOOK.

ERRATA in the Notes to the Second Book of the Life of King HENRY II,

P. 4.	1.	9.	leave out that.	P. 49.	15.	for tunc read hunc.
6.	13.		from the bottom for have, read here.	55.	12.	from the bottom, for Cherburg read Cherbury.
11.	9.		before naked leave out so.	62.	14.	for book read chapter.
29.	14.		from the bottom, for establishing therein a new military power, read the establishing therein of a new military power.	89.	1.	leave out in the Tower of London concerning a Petition.
37.	17.		from the bottom, for Breton read Britton.	117.	11.	for these read those.
43.	17.		leave out the commas after quam and me.	126.	1.	leave out seem to.
49.	15.		from the bottom, for the King's Chamberlains and his Mareschall, read the King's Mareschall	Ibidem	8.	for two read too.
				Ibidem	14.	for causes read cause.
				134.	3.	for his work read this work.
				Ibidem	7.	from the bottom, for quem read quam.

ERRATA in the Notes to the Third Book.

P. 146.	1.	12.	from the bottom, for Appendix in read Appendix to.	P. 159.	1.	2.	from the bottom, put the mark of the Parenthesis after supposed.
147.	13.		for cause read course.				

ERRATA in the APPENDIX.

P. 181.	1.	3.	for une read un.	P. 210.	1.	2.	from the bottom, for certè read certo.
Ibidem	8.		for effects read effets.	218.	16.		for paret read pareret.
193.	22.		after principi leave out the comma.	226.	5.		for Doveham read Doverham.
194.	6.		from the bottom, for aut vestris read aut è vestris.				at the bottom, for cornandum read coronandum.
200.	11.		from the bottom, for sua read suæ.	Ibidem	2.		from the bottom, leave out coronandum.
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ibid. welcomed as the deliverer of his country, 4. crowned, together with his queen, *ibid.* his conduct with regard to his coronation-oath, and the oaths to be taken to him: what measures he observed towards restoring the tranquillity of the realm, and union among his subjects, *ibid.* he meets his parliament, and in performance of the treaty of Winchester, immediately sends away the foreign troops left by Stephen, 6. and demolishes the castles erected in the late reign, 8. prosecutes W. de Peverel for the murder of the earl of Chester. In pursuance of the above treaty, he resumes crown-lands and possessions which Stephen had alienated, 8, 9. wherein he meets with great difficulties, but surmounts them by firmness and clemency, 9, 10. he calls a parliament at Wallingford, which settles the succession upon his eldest son, and in case of the death of that prince on his second, 14. confirms to his people the charter of King Henry I. 15. looks after the administration of the laws, and good order of the kingdom, 16. makes a wise choice of his ministers, 17. an account of these, and of the reasons upon which he chose them, 18—24. excludes the bishop of Winchester from all power, and why, 24. orders all that prelate's castles to be demolished, on his leaving the realm without permission from him, 25. lets him return, but confines him to his episcopal duties, *ibid.* does homage to Louis for his fiefs in France, 25, 26. applies to the pope, for a dispensation, to release him from his oath to observe his father's will with regard to the three earldoms of Anjou, Touraine, and Maine, which he obtains, 26, 27. His brother Geoffrey rebelling on that account, he takes from him his castles, but leaves him an honourable maintenance in lands and money, 28, 29. Obliges the

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Henry, and Margaret, daughter of Louis by his second wife, which Louis gladly accepts, 81, 82. He is invited to Paris by Louis, where he obtains from that prince an approbation of his title to Nantes, and a commission to judge and determine the dispute between Conan and Eudo, earl of Pontieure, upon the right to the dukedom of Bretagne, 84, 85. Conan makes him a cession of the city and earldom of Nantes, and he passes sentence in his favour, 86. soon afterwards he takes possession of Nantes, suppresses a revolt in Poitou, and returns into Normandy to attend on Louis at Mont St. Michel; gains the favour of that king by the respect he shews him on this occasion, which he makes an advantageous use of for his greatness in France, 86, 87. brings the earl of Blois to yield to him the strong castles of Fretteval and Amboise, which had been usurped from Anjou, and the earl of Perche, to restore two fortresses unjustly taken from his demesne in Normandy, consenting that the latter should hold the town of Belesme as his vassal, 87. recovers all that had been alienated, during the late civil war, from his demesne in Normandy, *ibid.* promises Louis to be his confederate in a holy war against the Moors in Spain, but trusts to Pope Adrian for the preventing of that prince from executing this project, which was improper at that time, and avails himself of the levies made, under pretence of it, in all his French dominions, to revive and enforce the pretensions of his queen on Toulouse, 88—91. he forms confederacies for a war on this account, 91, 92. he returns into England to ask the assistance of the English, 91, 92. holds a parliament or great council on the Easter festival, at Worcester, upon which occasion he and his queen wore their crowns (as was usual) but when they came

to the oblation, laid them down on the altar and vowed to wear them no more, 92. finds the barons of England, and all his military tenants, ready to assist him in the war against the earl of Toulouse, 92, 93. reasons for that complaisance, 93. 94. he is attended to it by Malcolm, the young king of Scotland, 94. finding that Louis had thrown himself into the city of Toulouse, with a resolution to defend it, he abstains from attacking it, against the opinion of his favourite Becket, 94, 95. reasons for this resolution, 96—98. but he prosecutes the war with vigour and success in other places, 98, 99. concludes a secret treaty with the earl of Evesreux, which helps to bring on a truce, 99, 100. he and Louis conclude a treaty of peace on terms that are honourable and advantageous to Henry: Particulars thereof, 101—104. see also 117. Henry consents, after the death of William de Blois, King Stephen's son, that his sister Mary, who was a nun, should be stolen out of her convent and married to the second son of the earl of Flanders, by which marriage that prince gains the earldom of Boulogne; though this act is opposed by Becket, as offensive to religion, 105—107. Henry makes a provision for Hamelin, his natural brother, by marrying him to the widow of W. de Blois, daughter and heiress to W. de Warren, earl of Surry, 107. he concerts measures with Louis on the part they should take in the schism between two popes, 107—114. he ratifies the peace with that king, but does not attend the celebration of his nuptials with a sister of the earl of Champagne, 114, 115. on his return into Normandy, he celebrates the form of a marriage, or public and solemn espousals between his son Henry and the princess Margaret, by which he gains the Norman Vexin, with three castles on the frontier, 116, 117. he is justified

by the clear words of the late treaty from the charge of fraud in this matter, 117. he takes the castle of Chaumont, in the county of Blois, from the brother of the French queen, delivers it to one of his vassals, who had a claim to it, and expecting a war with Louis, strengthens his territories with additional fortifications, and repairs of the old ones, where wanting, 117, 118. he also builds a palace in the neighbourhood of Rouen, and a hospital for lepers. 118, 119. he does not seek to fight with Louis, when he finds that a battle is avoided by that monarch, who had made a faint attempt against his frontier, but consents to a truce, during which he suppresses a rebellion in Aquitaine, and takes Chatillon above Agen, 119, 120. presides, together with Louis, at the council of Toulouse. Does a very important service to that monarch and Pope Alexander the third, by assisting them against the emperor, Frederick Barbarossa, 127—129. he and Louis have a meeting at Touci, on the Loire, with that Pontiff, whom they lead to a Pavillion prepared for their reception, walking afoot on each side of his horse, and holding the reins of his bridle, 129. observations on that act, 129, 130. Thro' the mediation of Alexander, he obtains a peace from Louis without giving up any thing to him, 131. he receives an extraordinary embassy from the Mahometan king of Valentia and Murcia, 131, 132. upon Theobald's death, he advances Becket to the see of Canterbury, against the general sense of his clergy and of the whole nation, and though his mother Matilda did her utmost to dissuade him from it: His motives to this choice: Violent means by which the opposition to Becket's election was got over, 132—140. Henry returns to England, and appeases a great commotion in South Wales; after

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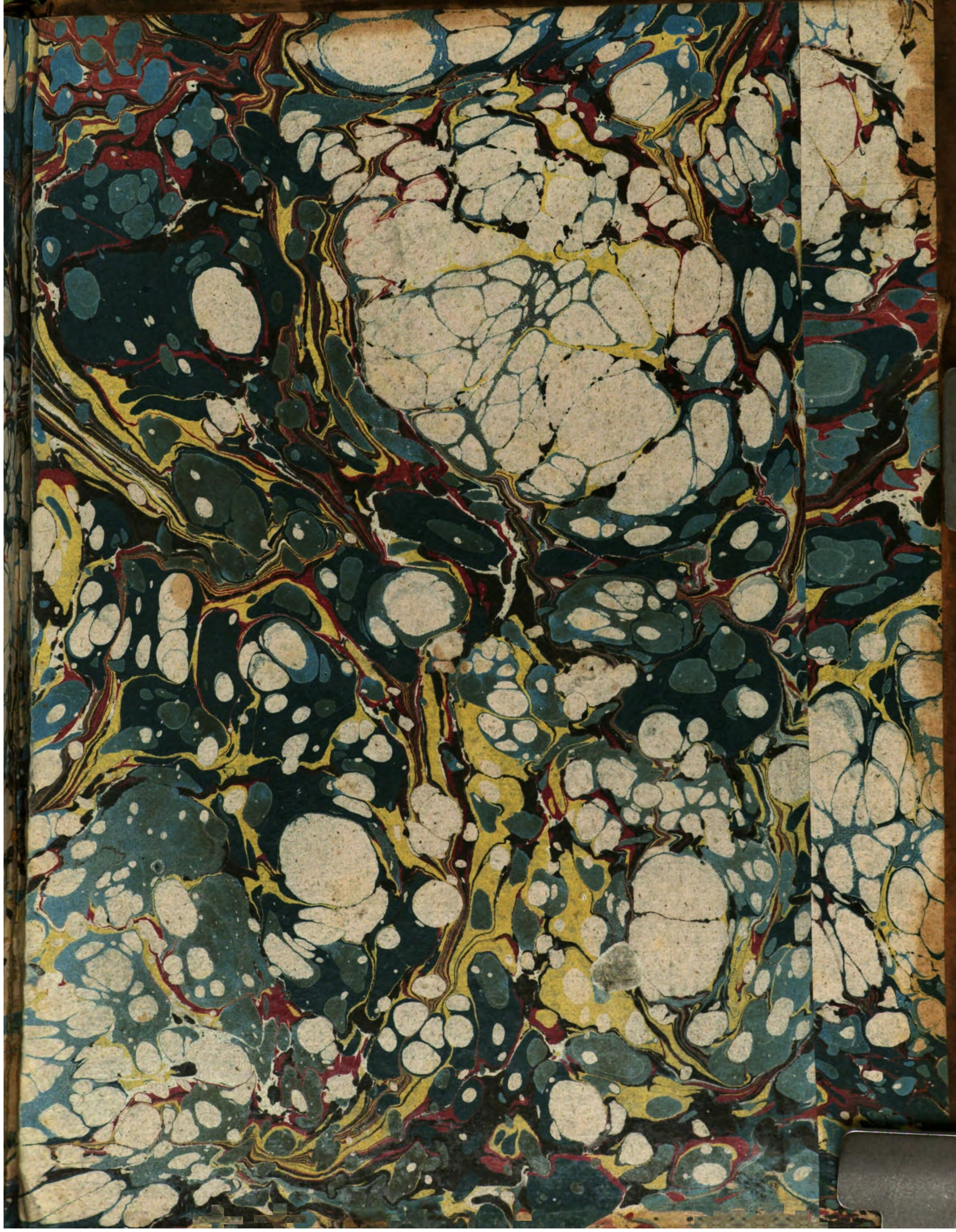
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